THE INTERNATIONAL JOURNAL OF ETHICS

A Quarterly Devoted to the Advancement of Ethical Knowledge and Practice

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The International Journal of Ethics deals with the fundamental principles of ethics and with the various phases of individual conduct and social morality. It will give especial prominence to the principles of justice and of law as the agency of justice. It affords a common ground for interchange of views between students of law and students of ethics and the social sciences. It aims at constructive thinking and appeals to all, whether lawyers or laymen, who desire to keep abreast of the great movement in legal thought, as well as of other pressing moral and social problems of the time.

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THE INTERNATIONAL JOURNAL OF ETHICS

Volume XXXIV OCTOBER 1923 Number 1

THE FUTURE OF THE JOURNAL

In entering upon its thirty-fourth volume, the *International Journal of Ethics* desires to make an important announcement. Hitherto, with the exception of two numbers in Volume XIX, the editors have been also the responsible publishers. Hereafter, the *Journal* is to be published by the University of Chicago Press. A brief statement as to the past history of the *Journal* and its future conduct seems appropriate at this juncture.

The first number of the *Journal* appeared in 1890. It indicated an increasing interest in ethical thought and ethical practice which had begun to manifest itself in many ways. The settlement movement, which has recently been so finely surveyed by Woods and Kennedy in *The Settlement Horizon*, was in the flush of early enthusiasm; ethical societies in several of the larger cities had been established; in Cambridge, Henry Sidgwick, and in Oxford and many other centers the brilliant group of scholars inspired by Thomas Hill Green were productive writers. The new subject of sociology was gaining a hearing in America, and turning the minds of scholars toward social problems, even as the extraordinary developments in the world of affairs and the rapid growth of cities with the incoming tide of immigrants compelled attention. Problems which had earlier seemed to belong more to the domain of the church, on the one hand, or of the government on the other, now challenged the thought of many who did not identify themselves with either of those institutions, or who felt that the

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intricate conditions of the time demanded not only the resources of these older institutions, but the analysis and objective treatment which scientific method and rational discussion could bring.

At that time, *Mind* had completed fourteen volumes of its distinguished career, but its pages had represented logic and metaphysics rather more than ethics. In America, the *Journal of Speculative Philosophy* and other less technical journals had presented occasional contributions upon ethical themes. But no existing journal was expressly a medium for ethical writing of a scientific character, and probably no university at that time would have considered establishing a journal for this purpose. Johns Hopkins University had indeed been publishing learned journals, and two years later than the foundation of the *Journal*, the *Philosophical Review* appeared under the auspices of Cornell University, but no such extensive program of publication of journals as the University of Chicago projected at its foundation had been regarded as a suitable use for university funds. Very likely at that time an editorial and business organization entirely independent of any institution was the wiser plan, even if any institution had been willing to undertake the publication.

Few journals of high standards are financially self-supporting, and the *Journal of Ethics* has been in good company in this respect. From the outset it received generous aid from friends who believed that a journal of high character, devoted to ethical theory and ethical practice and edited by an international committee, would be a desirable contribution to the intelligent guidance of life for the individual and for society. When from time to time older friends desired to be relieved of the burden, new friends were secured. The *Journal* has thus been able to maintain an independent policy and to maintain a high standard for articles. Its circulation in recent years has been increasing, and if it had not been for the greatly increased cost of printing, the *Journal* would have become

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self-sustaining. This increased cost of publication has fallen chiefly upon the editorial board, and it was decided a year ago that some change in business management must be made, if the *Journal* were to continue.

In this crisis the editorial board naturally thought of the University of Chicago Press, which publishes nine scientific journals. Although previous conditions had been such as to make it doubtful whether the University would be justified in adding a new journal to its list, the matter was presented to the University authorities, and, as a result of the conferences, it was the unanimous opinion of the American editors that the transfer should be made. The arrangement has also received the approval of the managing editor for Great Britain. It will mean that the burden of business management, including the important item of financial responsibility, will be transferred from the editors to an organization which is able to give better service. The editors, relieved of this part of the task, will be able to give more undivided attention to proper editorial functions.

The managing editor of the *Journal* from its foundation until July, 1914, was Mr. S. Burns Weston, and to him the highest credit is due for the standards of the *Journal* as well as for its business management during the first twenty-four years. For a short time he was aided by Mr. Percival Chubb, and later by Professor Frank Thilly. The present managing editor assumed direct responsibility for the editorial work and also for the business affairs of the *Journal* with the beginning of Volume XXV, October, 1914.

The first number of the *Journal* appeared in October, 1890. The original editorial committee, as printed on its title page, consisted of Stanton Coit, J. S. Mackenzie, J. H. Muirhead, Felix Adler, Josiah Royce, Fr. Jodl, and G. von Gizycki. Three of the first four still stand. The last three are no longer living. The opening number had a distinguished group of contributors: Henry Sidgwick, Felix Adler, Harold Höffding,

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John B. Clark, Bernard Bosanquet, Josiah Royce, and William Salter.

It may be of interest to reprint the aims of the *Journal* as stated in its initial number. They were declared to be:

1. To promote the study of ethics and of other sciences, in so far as they bear directly upon conduct.

2. To discuss special moral problems suggested by the growing complexity of modern life.

3. To provide a medium for the criticism of art, literature, and politics, from the point of view of their effect upon national and individual character.

4. To provide information concerning practical work of an educative and moralizing kind, which is conducted on a non-dogmatic basis.

With the change of management in 1914, these aims were unchanged, except that a distinct effort was made to include more definitely the forward movements in the philosophy of law. What does the change in publication involve as to editorial organization and policy? In the matter of organization, as in the case of all journals published by the University of Chicago Press, the responsible editor will be a member of the faculty of the University. But it is hoped and expected that, as with other journals so published, the co-operation of scholars in this and other countries will continue. In editorial policy, no change is involved. As in all the journals published by the University of Chicago Press, the aim is to provide a medium for the advancement of knowledge. In the case of the *Journal of Ethics*, its field as hitherto will comprise both the central field of ethical knowledge and practice, and the related problems in the bordering fields of law, politics, economics, literature, and religion.

The international character of the *Journal* has been, from the outset, an important feature. When the *Journal* was founded it might have been difficult to carry on a journal of high standards by writers of a single country. While this

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condition no longer obtains, it is believed that a journal of international character performs a highly important function by presenting in every number articles from both sides of the ocean, and by keeping its readers informed of the important literature appearing in English-speaking countries. The *Journal* has also a large circulation in Asia, especially in Japan, and is thus a bond of interest between scholars of West and East. The editors believe that the readers of the *Journal*, many of whom have been subscribers since the earliest years, may look forward with confidence to the future of the *Journal*.

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THE NECESSITY FOR PROPORTIONAL REPRESENTATION

PAUL H. DOUGLAS

I

Never, perhaps, has the efficiency of representative government been doubted more widely in democratic countries than today. So noticeable has been this degradation of legislatures and the attendant public disgust that Lord Bryce in his great book, *Modern Democracies*, felt impelled to head one of his chapters "The Decline of Legislatures," and another, "The Pathology of Legislatures."

If, then, our system of representative government has failed to fulfil its early promise, it is high time to seek the cause of its failure. We can begin at no better point than to consider the manner in which the members of our legislatures are selected.

The chief characteristics are, first, that each district generally elects only one representative, and secondly, that the election is determined by a plurality vote. There are a few exceptions to the first statement, but in the main, congressmen and state legislators and city councilmen alike are chosen from single-membered districts. In all of these constituencies, the candidate who receives the most votes is declared elected.

From these apparently simple features many evils flow. In the first place, it is patent that the minority in each district will be unrepresented and the majority in each district alone will choose the representatives, which inevitably results in either the complete exclusion of the minority from all representation or a very scanty representation, in comparison with its strength.

Consider the case of North Carolina in the congressional elections of 1920. The total vote of the ten Democratic candi-

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dates was 307,000, while the ten Republicans received a total of 225,000. The ratio of voting strength between the two parties was thus approximately 4:3, but the Democrats, by securing a majority in each district, elected all ten congressmen. It only required 30,700 Democratic votes to elect a congressman, but the 225,000 Republican votes could not elect one. The result would have been no different had all of the Republicans been disfranchised. In contrast to this, let us take the case of Missouri, which is entitled to sixteen congressmen. Here in 1920 the Republicans polled 713,000 votes to the Democrats' 583,000; a ratio of 9:7, yet the Republicans received fourteen seats and the Democrats but two. Only 51,000 Republican votes were required to elect a congressman, but over 291,000 were necessary to elect a Democrat.

In Pennsylvania the Democratic candidates received 511,000 votes, or 30 per cent of the total, but they failed to elect a single one of the state's thirty-six congressmen. Finally, the figures for the Indiana congressional elections of 1912 and 1918 are clinching. In 1912 the Democrats, because of the split in the Republican Party, elected all thirteen of the congressmen, although they polled only about 45 per cent of the votes. In 1918, although they polled about the same percentage of the votes (over 44 per cent) they did not elect a single congressman.

It is sometimes urged that minorities are not now underrepresented, since although a party may be excluded from representation in one district where it is in the minority, it will compensate for this by electing a representative in some other district where it has a majority. That there is a limited tendency in this direction in the case of the two major parties is undeniable. This tendency, however, is insufficient to secure just representation for the following reasons: (1) The majorities in the various districts rarely offset each other so evenly as to give each party representation proportionate to its strength. Thus in the British House of Commons the great disparity between the percentage of votes which a party polled and the

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percentage of members they elected from Great Britain (exclusive of Ireland) is shown by the following table.

TABLE I

Year	Non-Conservative Percentage of		Conservative Percentage of	
	Votes	Members	Votes	Members
1886.....	48	35	52	65
1892.....	50	49	50	51
1895.....	47	32	53	68
1900.....	46	33	54	67
1906.....	57	75	43	25
1910.....	52	59	48	41
1922.....	62	44	38	56

In the 1918 elections, the coalition candidates polled only 57 per cent of the vote but elected 80 per cent of the members. Elections in this country show similar disparities between the two major parties while because of their scattered votes the minor parties receive proportionately even less representation. (2) The representative of a victorious party in one district does not necessarily represent the views of the members of the same party eleswhere. Are the views of the unrepresented Pennsylvania Democrats on labor questions, for example, cared for by the Democrats of the South? (3) Finally, can we say that a group is represented by a man in whose selection it has had no voice?

Not only, however, does the present system result in a gross underrepresentation of minorities, but it frequently results in an actual underrepresentation of majorities and in minority control. This may be effected in three main ways: First, in a three-cornered election where no candidate receives a majority, the winner, though receiving a plurality, may not be the real choice of the voters. The majority may prefer either one of the other candidates to him. This was notably the case in the election of 1912. The second case where an actual minority may yet secure a majority of the representa-

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tives is through the common political practice of "gerrymandering" when the majorities of one party are concentrated in a relatively small number of districts, while those of its opponent, although smaller in total size, are scattered over more districts, and hence elect more representatives. The third way in which minority rule may result is when a majority of the representatives of the majority party are sufficient in number to enact a measure which represents in reality the wishes of only a minority of the voters.

In still another way, the necessity for a candidate to secure a plurality in order to be elected leads to a misrepresentation of the real wishes and interests of the major portion of the members of the victorious party itself. In the main, both parties are assured year after year of a permanently continuing amount of support ranging generally from 35 to 45 per cent. But these voters by themselves are seldom sufficient for either party to win an election. In order to win, the candidate must secure the support of those individuals and organizations who are not committed to either side. There is thus not only a great temptation toward corruption to secure these few votes that mean so much, but the candidates feel themselves forced to give pledges to those organizations and groups which demand a *quid pro quo* for their support. In precisely the same way, by controlling a strategic number of votes, do political machines usually secure their power and succeed in making or breaking candidates. It is because of this necessity for a majority, that congressmen and legislators openly confess themselves terrorized into supporting measures which they do not approve. They feel forced to yield to the threat of the organized groups, whom they believe to hold the balance in their districts. As Lowell says:

> Every fool knows that a man represents,
> Not the fellers that sent him, but them on the fence.

But perhaps the worst count against our present mode of election is not the non-representation of minorities, nor the

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frequent actual rule by minorities, but the fact that it tends greatly to lessen the possibility of securing able and independent men as our representatives. It seems to be true in our modern life that most of the original and striking leaders of thought today are leaders of minority groups who, although beloved by their followers, are so equally disliked by other groups that it becomes difficult for them to secure the necessary majority for either nomination or election. Whether we wish it or not, we live today in a world of groups; many of them bitterly hostile to one another and none of them tending to have a working majority. Since few groups will be satisfied with the leader of another group, the man who is able to secure a majority tends to be one against whom few are prejudiced, rather than a person whom many actively want. Thus he must generally be one who is not in any way displeasing to the Catholics or to the Protestants; he must not be too high in the favor of either the Chamber of Commerce and the employers' associations, on the one hand, or of the labor unions on the other; he must not be an open favorite either of the Anti-saloon League or of the liquor forces; nor must he have alienated any prominent organization of women or farmers. In short, he must not have given ground for suspicion or dislike by any group of appreciable size. This means that he cannot typically be a man of vigorous leadership but must instead be either relatively obscure or one whom no one actively wants but whom few dislike. Because of this necessity of securing a majority we get legislative bodies that represent the least common denominators of our desires and aspirations.

The possibility of securing good men for office is still further lessened by the fact that once the candidates of the two major parties have been nominated, however undesirable they may be, it becomes almost impossible for an independent candidate, however worthy, to be elected. Large numbers of voters may be anxious to vote for him, but none but the most hardy will dare to do so lest they not only throw away their vote but

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also actually help the more undesirable of the two major candidates to be elected. Who has not been frequently in the predicament of wanting to vote for the independent Brown rather than for the two major candidates, Green (whom you think little of) or Jones (whom you think the worst of). But since Brown has little chance of securing a plurality, you are afraid to vote for him because that is a vote taken away from Green and thus indirectly a vote for Jones—the worst of all. Our election system, therefore, prevents you from voting for the best man, lest you thereby help the worst. This fear of splitting the ticket and thus letting one's worst opponents in is perhaps the chief reason why a permanent third party has thus far not succeeded in establishing itself in our political life.

II

Happily these evils are not inevitable under representative government. It is possible to obtain legislative bodies which, while ensuring majority rule, will give proportionate representation to minorities, and which will contain more men of higher ability than the legislatures of today. Proportional representation is the method by which this reform may be effected. It is designed so to condense the desires and interests of the voters that the legislature will represent in microcosm their strength and their importance in the body of the people. It is the same principle which Burke eloquently expressed when he said: "The virtue, spirit, and essence of a House of Commons consists in its being the express image of the feelings of a nation."

Manifestly, the first step in securing such a principle is to abolish the single-membered districts which prevent the representation of minorities, and to merge them into a smaller number of multi-membered constituencies, preferably with from five to nine representatives.

Within these multi-membered districts proportional representation may be attained by two methods: by the list system and by the single transferable vote, or the Hare system.

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The essential feature of the list system, which is the form of proportional representation used on the continent of Europe, is that the voter casts his ballot for a particular party ticket and the seats are then divided among the parties in proportion to their vote. The nominees typically are declared elected in the order in which they appear on the party ticket. Thus if the Clerical Party in Italy, for example, polls approximately one-third of the votes in a nine-membered constituency, it is entitled to three representatives. The three candidates first listed on the Clerical ticket are the ones designated to serve. This system, although worked out independently by Charles Gilpin of Philadelphia in 1844, and Victor Considerant, of Geneva in 1846, was first adopted in 1890 by the Canton of Ticino in Switzerland. It was copied by a number of Swiss cantons, and was adopted in 1900 as the method of electing the members of the Belgian Parliament. Other countries that adopted it in the years preceding the Great War were Sweden, Cuba, Uruguay, Bulgaria, and Costa Rica. The stress and strain caused in all countries by the war and the necessity of conciliating the economic, religious, and racial minorities, if permanent government was to endure, has led within the last five years to an extraordinarily rapid extension of the list system in Continental Europe. It is now used by the Netherlands (since 1917), Denmark, Switzerland, Germany, Austria, Czecho-Slovakia, Poland, Italy,[1] and Luxembourg. It is also being used increasingly in local elections.

Now, while the list system of proportional representation is infinitely superior to our present method of voting, it is distinctly inferior to the single transferable vote, or Hare system. The fact that the candidates are ordinarily declared elected in the order in which they have been listed on the ticket by the party obviously gives large power to the party managers in determining which one of their candidates is to be elected.

[1] Since this was written, the Italian Fascisti have demanded and secured the repeal of the law granting proportional representation.

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The ingenious system of M. Victor d'Hondt, which has been adopted as the Belgian method, allows the voter to express his preference for a particular candidate on the party list, and thus meets the difficulty in part; but only in part, for even under this system the men at the top of the list have an enormous advantage over those appearing lower down. Furthermore, the list system does not permit a voter so to mark his ballot as to assist some candidate in another party, should his vote fail to elect his first choice. Thus, while the list system gives each party representation proportionate to its strength, it binds the voter more closely to his party, and limits his choice more rigidly than does the method of the single transferable vote.

Under the single transferable vote, or the Hare system, which is the method used in those sections of the English-speaking world which have adopted the principle of proportional representation, the voter casts his ballot for candidates and not primarily for parties as such. Like the list system, it was developed independently by two thinkers. Thomas Hare is regarded as the English founder of the theory by his pamphlet on "The Election of Representatives," which appeared in 1857. Two years previously, however, M. Andrae, a Danish mathematician and cabinet minister, had not only devised an identical system but had actually succeeded in getting it adopted for the election of some members of the *Rigsraad*, or federal council of Denmark. It is primarily from Hare and such disciples as John Stuart Mill in England, however, that the world-movement for the single transferable vote has drawn its inspiration.

The principal steps in the Hare system may be briefly stated. Several members are elected in each district. The voter marks the figure "1" opposite the name of that one candidate whom he most prefers, he then puts the figure "2" opposite the name of his second choice, and so on, marking as many choices in the order of his preference as he wishes. As

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has been implied, the voter's ballot can be counted for only one of these candidates. If enough other voters have indicated the same first choice so that the candidate secures the proportionate number required to elect, i.e., approximately one-ninth if nine are being elected, then the ballot is counted for this first choice and assists in electing him. If, however, the candidate has already received sufficient votes to be elected without this vote, and hence does not need it, it is not allowed to be wasted, but is transferred to the elector's second choice and helps to elect that candidate if possible.[1] Furthermore, should this second candidate not receive the given proportion (quota) of votes required to elect, the ballot is not thrown away, but is transferred to the third choice. In the counting of the ballots, the unneeded surpluses of those candidates who have more than enough first choices to elect are first transferred. The candidate lowest on the poll is then declared eliminated, and his ballots are distributed according to the next preferences indicated among those other candidates not already elected. This is repeated until all but the required number of victorious candidates have been eliminated. By this process, the voter is assured that his vote will not be wasted; if it cannot help his first choice, it will be used to assist his second; if it is ineffective there, it will be transferred to his third, and so on. He is also assured that his marking the lower choices on his ballot will not injure the chances of his higher preferences, since the lower will be counted only if the higher choices fail to be effective.

The preferential feature of the system is precisely similar to a man sending his son to the corner to buy a newspaper.

[1] Assuming that a given candidate has, for example, forty more first-choice votes than are needed to complete his quota, the question naturally arises, *which* forty ballots will be transferred? This can be done by either of two methods—the chance or the exact. Under the chance method, forty of the ballots would be selected at random and each transferred to its next effective choice. Under the exact method, the next effective choices of all of the ballots of the given candidate would be counted and each remaining candidate would be assigned the same proportion of the forty votes as he had secured of all the ballots in question. For all practical purposes the chance method is sufficiently accurate to make a recourse to the exact method unnecessary.

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He asks the boy to get him a *Times* if he can, but if not, then a *Herald*, and if no *Herald*, then a *World*. In exactly the same way, under the Hare system, does a voter mark a ballot, asking first for Brown's election, but if his vote either cannot secure that, or is not needed to secure it, then asking for Smith, and if not Smith, then Thomas. Just as the newspaper buyer made certain that he would secure some paper that he wanted, so under the Hare system a voter is ensured that he will get a man of his choice, and that he will not be compelled to be "represented" by a man whom he positively does not want at all.

The single transferable vote is therefore superior to the list system, since it not only gives proportionate representation to minorities but gives the voter perfect freedom as well in helping to elect the men he prefers, irrespective of party standing or affiliations.

After the Danish senate, the next body for which this method was adopted was the Tasmanian Parliament, where it was introduced for a part of the districts in 1896 and extended to the entire body in 1907. In 1909, South Africa put it into effect as the method of choosing its senate, and the cities of Johannesburg and Pretoria applied it in their municipal elections. In 1915 it was adopted for all city councils in the Transvaal. Since then, it has been adopted in New Zealand, New South Wales, the Irish Free State, and Malta, as the method of electing legislative bodies while it is also used for school boards in Scotland and municipal councils in Ireland. It narrowly failed of being adopted in 1918 as the exclusive method of electing members of the British House of Commons.

Within the last few years proportional representation has been making rapid progress in North America. Practically all of the cities of Manitoba, Saskatchewan, and British Columbia use it for the election of their municipal councils, as does the Winnipeg district for the Manitoba legislature. Four cities in the United States are now operating under it, while a fifth,

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Cleveland (now the fifth largest city in the country), has incorporated it as a leading feature in its new charter, which will go into effect in the autumn elections of 1923.

III

Just what are the practical benefits which the Hare system of proportional representation will effect? First and foremost, it will make the legislative bodies truly representative. All voters but the insignificant minority that cannot secure a quota will be represented by men of their own choosing. A representative will thus represent people of definite aims and hopes, and not as now a mere geographical district, a large percentage of the inhabitants of which are opposed to him.

It is, of course, clear that under such a system where all groups were represented according to their strength, the pursuing of many extreme policies and hasty measures which are in reality opposed to the will of the people would be prevented. The 1922 elections to Dail Eireann in Ireland are a striking proof of this. Prior to the elections, the official Irish Free State Party led by Arthur Griffith and Michael Collins felt compelled to sign a pact with the Irish Republicans, agreeing to a coalition government and the granting to the Republicans of nearly half the seats in the Dail and in the cabinet. A panel of candidates was drawn up for each district and officially supported by both parties. The great body of Irishmen, however, who were satisfied with the peace settlement and the creation of an Irish Free State, did not want the extreme Republicans to be granted such power. Ordinarily they would have been helpless, but under the Hare system they were not. Independent candidates pledged to fulfil the treaty were advanced since the voters knew that they could vote for their independents without imperiling the chances of the Griffith-Collins candidates. The result was an overwhelming defeat for the anti-treaty forces. The followers of De Valera lost all claims to represent the majority of the Irish people,

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and Griffith and Collins were enabled to go ahead with more decided measures to enforce the treaty.

The proportionate representation of minorities, moreover, would force majorities once elected to give more careful consideration to measures that would otherwise be rushed hastily through. Most important of all, we should elect better legislators, and thus elevate the whole level of our political thinking and of our legislation. No longer would the fear of "splitting the ticket" force the voter into the hands of the party machine. Under the Hare system, the Brown-Green-Jones enigma would be solved. The voter would by all means mark his first choice for the independent Brown, and would not thereby help his party candidate, Green, to be defeated by Jones. The voters, therefore, could pick men they really desired instead of being as now largely compelled to accept as the lesser of two evils, men handed down by party machines.

Under such a system the intelligent and high-minded voters would be able to elect men of their own stamp. These men and women are today helpless in single-membered districts, but armed with the single transferable vote in multi-membered districts, they could group together and elect some superior candidates. A few such men in our legislatures would have an influence out of all proportion to their numbers, and by their very presence would raise the tone of discussion and the character of legislation.

In addition to the election of more men of an independent and intelligent turn of mind there would result a further improvement from the election of those forceful and able group leaders who are now seldom found in our legislatures because of their inability to command a majority. Narrow and extreme some of these men might be, but their vigorous personalities would be as a breath of fresh wind in our legislative halls compared to the trimmers who are now thrown upward into power by the exigencies of the majority system.

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Perhaps just as fundamental as all this would be the removal of the sense of smarting injustice which many have come to feel toward government. There are large groups of men and women who are thinking intensely about the basic conduct of our economic and social life, and who have honestly come to the conclusion that it requires radical changes. These groups feel themselves practically unrepresented in Congress and in our legislatures. The majority shuts them out from participation in the processes of government and thus largely suppresses the public venting of their grievances and desires. Is it any wonder that large sections are coming to feel that our government is not only alien to them but that it is controlled by their enemies, that they can only attain their ends *outside* of the government, which means in practice *against* the government itself? In consequence, large numbers of voters are giving up hope of ever effecting the changes they desire by political methods, and are turning instead to "direct action."

Now surely it is the path of wisdom to lessen these stresses and strains within our society. The forces which we are now allowing to accumulate until they may ultimately blow away the machinery of government could with intelligence be harnessed to useful work, or at least prevented from wreaking any injury. The granting of representation to these groups in proportion to their number would remove from them most of their just grounds for criticism against our present governmental machinery. They would be given an opportunity to convince the rest of us that they were right and would be encouraged to carry on their campaign within rather than outside of the field of government. This is not theory only. As Count Goblet d'Alviella declares, its adoption by Belgium in 1900 was all that prevented a revolution by the large non-Catholic groups which had hitherto been grossly underrepresented. Furthermore, is it not a commonplace that when the representatives of divergent aims and interests meet together to discuss common problems and arrive at a decision, they

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cannot but become better acquainted with each other, more cognizant of the real nature and cause of each other's views, and therefore inevitably more tolerant and less hostile? Under proportional representation, minorities have by the very fact of their representation, the means of keeping alive their ideas, so that if successful in convincing the public they may finally attain that aim of all minorities—to become themselves a majority. The changes which are needed in our social and political life will therefore come just to the degree to which men want them to come, and will be effected in a truer spirit of good-will than could otherwise possibly be the case.

In yet another sense, would proportional representation act as a stabilizing influence. It would prevent the sudden overturns and complete reversals of policy that inevitably result from our present mode of election. Since elections are generally decided by the 10 or 15 per cent on the fence, great changes in representation necessarily occur which by no means represent the actual change of opinion. The so-called political landslides, as a matter of fact, are seldom really landslides at all; they are usually mere shiftings of a few per cent of the voters. Thus a shift of 10 per cent of the voters in the English elections of 1906 was sufficient to transform the Liberal Party's representation from Great Britain in the House of Commons from 33 per cent to 75 per cent. These violent fluctuations, which greatly magnify the changes in public sentiment, hinder and often prevent the development of any consistent and maturing public policy while they also cause an unnecessary wastage of trained legislators. This very impermanence of tenure, moreover, serves to deter able men from offering themselves for office. Under proportional representation, the composition of the legislative body would change only to the degree in which public opinion had altered. Groups would probably continue to elect the same representatives unless they had proved unsatisfactory, and the chances of defeat for individuals who had given of their best would be

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greatly lessened. The longer tenure of office would in turn lead to better legislation and to the securing of better men.

This elimination of the present importance of the few votes that turn the scale would directly lessen the opportunities for corruption which now attend so many elections. Those organized minority groups that now hold the balance of power and are able to intimidate practically all of the candidates would lose their dominating position. The men on the fence, in short, would come to wield only that influence to which their numerical strength entitled them and no more.

IV

What objections are urged against proportional representation and what are their validity?

1. *It is too difficult and complicated to be administered.*—As a matter of fact, the Hare system, if properly explained, is much more simple than our present method of voting. All the voter must do is to decide which of all the candidates he prefers and then mark "1" after the name of his favorite; if he wishes to express further preferences he may then decide on his next choice and mark "2" after his name, and so on.

Some have maintained that the methods of counting would so confuse the voter that he would lose confidence in the system. But is there anything complicated in the fact that only a proportion is needed to elect, or in the fact that if one's vote cannot help one's first choice, it will be transferred to the second choice, but only if and when it cannot help the favorite? Once this is understood, it is enough. It is no more necessary for the voter to understand the precise method of fixing quotas and transferring surpluses to use the system properly and effectively than it is for a railroad traveler to know the principles of the steam engine in order to insure his safe arrival. The experience in Tasmania, South Africa, Ireland, Canada, and Sacramento, California, justifies the conclusion that if the system of voting is properly explained

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to the voters prior to the election, the proportion of spoiled ballots should not exceed 2 or 3 per cent at the outside.

What effect will the Hare system have upon the process of counting? In the first place, it will enormously simplify the work of the precinct officials since they will merely sort the ballots according to first choices and forward them in separate bundles to the central election board. The work of this central board will be more difficult than that of any corresponding body at the present time, but the increased skill required in the count is concentrated in a relatively small number of persons, who can be trained for their work. Nor is the work here very difficult. Speaking of the Tasmanian system with its very elaborate method of transferring surpluses, Judge Jethro Brown remarks that the returning officer who directs the count "need display the industry of an average clerk—scarcely more." Candidates can thus, by watching the count, insure themselves of an honest result.

2. *It will lead to our legislative bodies being filled with cranks and faddists.*—Without stopping to scrutinize too closely the definition of "crank," it is sufficient to remark that this will be true just to the extent that there are cranks and faddists in the public as a whole and no more.

3. *It will result in individual legislators representing groups instead of all the people.*—Under proportional representation, it is urged that government would consist merely of a collection of various groups, and public policies would consequently be determined not by consulting the general welfare but rather by a compromise of group interests and desires. Are these critics inobservant enough to deny that, as a plain matter of fact, it is group interests that today determine legislation? Do not the "lobbyists," of every type of organization, swarm in droves at every capitol? Is it not these groups that legislators consult and follow? Do we not have in Congress the farm bloc, the big business bloc, and the labor bloc? Overlapping these are the ex-soldiers bloc, the protected industries

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bloc, the consumers bloc, the Army and Navy bloc, the peace bloc, the native-white bloc, the immigrant bloc, and so on? Analogous groupings exist in every state legislature and city council. Not only do these various groups exist but they constitute the vital sources of power with which every political realist has to deal. Now once recognizing the omnipresence and the practical omnipotence of these groups, a closer examination will reveal another characteristic. The men who direct the policies of these groups do not sit in the legislatures themselves but are behind the scenes. They pull the strings from off stage. It is not so much a question of *the* invisible government as of a multiplicity of invisible governments, some of them, indeed, not really invisible at all. It is not Senator Capper who is the real representative of the farming interests at Washington, but rather Mr. Gray Silver and Mr. James Howard of the American Farm Bureau. It is not to Senators Lodge, Wadsworth, and Watson that we look for the formation of the legislative policy of the large manufacturing and banking interests of the country; if we are seeking the secret springs of power of which these men are but the surface legislative exponents, we must rather look to such organizations as the National Association of Manufacturers; the mill owners of New England; the iron and steel interests of Pennsylvania; the large financial firms of New York; and the fast-growing manufacturing industries of Ohio, Indiana, and Illinois. Behind the late Congressman John I. Nolan, chairman of the House Committee on Labor, stood the figure of Mr. Samuel Gompers. The prohibition leaders are not Senator Sheppard and Representative Volstead, but Messrs. Wayne B. Wheeler and Cherington, of the Anti-saloon League. The person who objects to proportional representation because he fears that it will introduce group government is shutting his eyes to the fact that group government already exists. What proportional representation would do would be, not to introduce group government (that we already have), but *to bring the groups*

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out into the open. To the extent that these groups represented the dominant interests of a sufficient number of voters, they would secure representation. They would choose the leaders of their movements who now pull the puppet strings. The representatives of the chief groups would then meet face to face, and reconcile their conflicting interests in public. The resulting adjustments would be far more healthy than the present secret and feverish intrigue of the lobby.

Finally, proportional representation would permit those of us who do not feel that any of the present groups represent us to organize groups of our own, and, if we could muster a sufficient proportion of votes, to elect men to represent us.

4. *It will result in splitting the legislature into so many small groups that any permanent government will be impossible.*—The spokesmen for this objection urge that, under proportional representation, no one party is likely to have a majority, and that government consequently would have to be carried on by a coalition of dissimilar interests which would be but temporary in their adhesion. In consequence, it is held, governments would be as short-lived as those of Italy and France, where, because of the many parties, ministries are of brief duration. In dealing with this criticism it is necessary to distinguish carefully between three distinct governmental groups, which these critics of proportional representation generally confusedly lump together: (*a*) the civil service—primarily merely the administrative arm of government and not policy-making; (*b*) the high administrative officials, who are also policy-makers (under this class are included the European cabinets and our mayors, governors, and presidents); (*c*) the relative dominance of any one set of ideas or personalities in the legislative branch of government.

Under any decent civil-service system, the permanence of the first class would be assured, whatever might be the method of electing legislators. In the United States our chief executives are chosen independently of the legislatures, and are not

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dependent upon them for their continuance. Consequently, the introduction of proportional representation would not shorten their tenure of office. In those countries with the cabinet form of government, where the higher executives are dependent upon the approval of the legislature, *if* this objection really would apply to the legislatures themselves, then this group would be involved as well. We come back, then, to the basic factor, namely, the effect of proportional representation upon the permanence of legislative policy. The critics of proportional representation frequently reason as though it would result in the representation of almost scores of diverse groups, possessing little or nothing in common. There may have been some justification for this view in the early days of the movement when Thomas Hare in his *Election of Representatives* proposed that the entire United Kingdom should be treated as one district, thereby giving representation to every one-six hundred and seventieth of the electors, but modern proportionalists do not advocate more than seven or nine members from a constituency. This would allow all numerically important groups to be represented, preventing the representation of many numerically insignificant groups whose presence might handicap legislation.

Those fearful lest the stability of government be destroyed by proportional representation overlook the fact that in human society itself there is a balancing of political philosophies. Mankind is composed not only of the zealous innovators but also of the conservative-minded, with, as Lord Hugh Cecil says, "their liking for the familiar and their distrust of the unknown," while shading off between these extremes lie those who are tinged with both tendencies. An assembly which represented all these shades of opinions, as would a body elected by proportional representation, would contain within itself an equipoise which would prevent violent fluctuations of policy. When changes in public opinion occurred they would not be from one end of the political scale to almost the

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other, as so frequently occurs today, but would be largely a shifting from one intermediate point to another. The political pendulum, in other words, would swing not from left to right but from left center to right center.

But while the legislative policy would move within fairly close limits, it is quite possible that the technical balance of power might shift more frequently than now. This, however, would be a boon rather than a misfortune, even in countries where it means more changes in the executive. We have had too many cases of governments which have ceased to represent the weight of public sentiment—such as the Balfour government in England from 1902 to 1906—continuing in power solely because of the strength of their earlier legislative majority.

5. *It will cause geographical interests to be unrepresented.*—Many persons object to proportional representation on the ground that the replacement of the single-membered by the multi-membered districts will mean that the small locality units, which are now as such explicitly given representation, will then be denied representation. Under proportional representation, if the people of a given region are locally minded and wish to be represented as a geographical unit by someone from their neighborhood, they can cast their votes for such a person and elect him. What the Hare system does do is to liberate those voters who do not feel that they are represented by a man who merely happens to live in their locality. George H. Hallett, Jr., puts the case succinctly when he says: "Under such a system a legislator would represent a lot of people whose ideas and interests were near together, though their homes might be miles apart, instead of a lot of people whose ideas and interests might be miles apart though their homes were near together." Legislatures, in other words, would represent primarily *persons* and not square miles of land.

6. *Proportional representation is inferior to representation by occupations.*—The example of the Soviets of Russia has stimulated many persons to advocate common occupation

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as the best basis for representation. Under this system farmers would be represented by farmers, coal-miners by coal-miners, bankers by bankers, teachers by teachers, etc., instead of as now all groups largely by lawyers. This plan has, indeed, a certain surface plausibility, but is it not too shallow? Men who work together do not necessarily think alike. There are minorities in industry just as in localities, and occupational representation would give these minorities no protection. Moreover, contrary to Soviet theory, we have many interests and many relationships other than that of common occupation, and we may regard any one of them as dominant in our interests, and prefer to be represented in that capacity. Proportional representation is based upon a deeper reality than merely that of occupation, namely, men's fundamental loyalties. To the extent that their loyalties were to their occupations, then under the Hare system the voters could so express their preferences, and if their number were sufficient, could elect their man. But if their basic loyalties were elsewhere, they would not be compelled to be "represented" by men who merely happened to work in the same industry as they.

V

The advocates of proportional representation are not foolish enough to believe that it will be a panacea for all of our political ills. Condensing public sentiment as it will, it is inevitable that a legislative body elected by it will represent the follies and prejudices of the electorate as well as its wisdom and tolerance. But it would enable our legislatures to catch up to the decency of the public. It would give the people the government which at any one time they merited, and it would permit the government to be improved just in the degree that men themselves became more humane and more desirous for true wisdom. Our need for it is even greater than in the days of Mill. After over sixty years of agitation and experiment, the time is ripe for us to use it.

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PHILOSOPHY IN THE UNIVERSITY OF CAMBRIDGE

C. DELISLE BURNS

The University of Cambridge does not indulge in "movements," for the Masters and Doctors who are the university seem to regard a "movement" as more suitable to the undergraduate mind which follows a fashion. The greatest names of Cambridge, Bacon and Newton and Darwin, are those of solitary workers, and indeed all sensible men fear above all to have a following, for no thinking person follows any leader but the Logos. Nevertheless, the results of individual investigation are used by other investigators, working at problems whose solutions supplement those of their fellows. Thus thinking becomes Baconian or Newtonian or Darwinian; and it is in this sense that we can speak of a philosophy now specially connected with the University of Cambridge, which does not, however, bear the name of any one man.

It is not the custom of the university, as of other institutions, to concern itself with commentary upon opinions, however venerable or however new and popular; and, therefore, its philosophical workers are as intimately concerned with fact as their fellows, the scientists. There is indeed a very close connection between Cambridge philosophy and Cambridge mathematical science. The present philosophy is very largely due to the mathematical initiative of Bertrand Russell and the logical acumen of G. E. Moore, but their books have been published for some years and may be presumed to be already well enough known. The last few years, however, have been marked by the publication by the Cambridge University Press of a succession of remarkable books, carrying forward the hypotheses suggested by Mr. Russell and Mr. Moore. It is not an accident that the University Press should produce so many statements of a new philosophical outlook. The out-

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look is, perhaps, typical of Cambridge; and the Press is to be congratulated on fulfilling so admirably the functions of publicity by which a university may serve the wider public outside.

The books themselves do not contain one body of doctrine, but express some disagreements, and we shall select the following as indicative of the position in which philosophy now stands at Cambridge: McTaggart's *Nature of Existence*, C. D. Broad's *Perception, Physics and Reality*, A. N. Whitehead's *Principles of Natural Knowledge, the Concept of Nature, and The Principle of Relativity*. With these should be connected W. E. Johnson's two volumes on *Logic*. All of them are published by the Cambridge University Press.

It should be understood that what follows here is not a review or criticism, nor even an analysis of the contents of these books. We are concerned only with putting upon record the fact of a new philosophical outlook; and that only in view of the specfic interests of readers of the *International Journal of Ethics*. It is not pretended that there is at Cambridge a new "philosophy"; for the attitude and outlook is what is new and not any special body of doctrine or inclusive philosophical system. The data of morality for the science, if there is a science, of ethics, and the data for aesthetics have not been analyzed in these Cambridge publications; but any ethics or social philosophy must take account of the logical reconstruction with which the Cambridge philosophers are concerned.

We may begin by noticing the latest development of an old tradition. It is impossible here to render the subtlety of Dr. McTaggart's reasoning, and, therefore, what follows must be regarded as a brief indication only of this statement of a complete metaphysics. It is significant largely because it is a more inclusive view of the problems of philosophy than is common at Cambridge today, for the tendency among other philosophers is to specialize as the scientists specialize. But *The Nature of Existence* is neither so restricted in its outlook as

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the works of Professor Broad and Whitehead, nor so spasmodic as that of Dr. Moore, to the three of whom the author begins by offering his thanks.

Dr. McTaggart is determined to be a Hegelian, perhaps partly to show that Oxford never understood Hegel, but perhaps also to annoy the Realists who regard Hegel as dead and buried. But Dr. McTaggart wears his Hegelianism "with a difference"; for he begins by pointing out that Hegel was wrong in dividing categories into threes, in the conception of truth coming out of error, and in his belief as to a necessary order of the categories. The more important point, however, is that Dr. McTaggart's idealism is not neo-Hegelian. It repudiates the turn given to philosophy by Kant. It is "not the idealism which rests on the asserted dependence of the object of knowledge upon the knowing subject," and is thus in a sense realist; but it asserts that "nothing exists but spirit" (Sec. 52). The fuller meaning of this will appear, no doubt, in the later volume which is to follow; but so far as discussed in the present volume, the nature of what exists does not appear to have those characteristics which distinguish what is usually called spirit from what is usually called "material energy." Berkeley is invoked by Dr. McTaggart, and Berkeley performed some wonderful tricks with the meaning of the word spirit; but it is difficult to see what is gained by stretching the word to provide a covering lest "matter" should go about naked. The esoteric use of "spirit" may prove to be only a fig leaf, to distinguish Dr. McTaggart's Idealism from unblushing Realism. The most valuable contribution of Dr. McTaggart to philosophy is the acute analysis with which his book is mainly concerned. Substance is rehabilitated, and is, of course, taken to mean not only persistent existents but "a sneeze, a party at whist" or "all red-haired archdeacons." Relations between many substances, any qualities, and between substances and qualities, are known to be ultimate existents which are indefinable. The number of qualities

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which are the "nature" of any substance is infinite, but this does not make a knowledge of the substance impossible, because "it is not necessary to complete the series in order to determine the meaning of the earlier terms" (Sec. 88). This seems to refute Bradley's argument against the idea that a statement about any appearance may be "absolutely" true, although other statements also can be made about it.

Through "determining correspondence" Dr. McTaggart seeks to explain how, although there are no simple substances, the description of any substance does not involve an infinite process of describing each set of parts by another set of parts. Determining correspondence is the fact that some (not all) sufficient descriptions of a precedent set of parts give sufficient descriptions of the members of a sequent set, so that there is no logical necessity for an infinite process. Causality is a relation between qualities which is of the type of determining correspondence. Further chapters deal with the different kinds of order in the universe and with "laws"; and the final chapter deals with the unity of the universe. Every substance is bound up with every other through its "primary parts." These primary parts are determinant of secondary parts; and the primary parts, as it seems according to Dr. McTaggart, have a sort of correspondence with the universe, somehow connected with the correspondence of their secondary parts with them. Each member of a certain set of parts, then, "corresponds with the universe as a whole" and this is called "self-reflection" (Sec. 284). This is Leibniz or very nearly; but I cannot pretend to understand what self-reflection can possibly mean. It would, of course, be convenient for avoiding the difficulty of a plurality which is *not* the same as a unity, if in reflection, the mirror could reflect itself, or if my face were identical with its reflection in the mirror. But it is not. "If the universe is a self-reflecting unity", says Dr. McTaggart, "it is thereby distinguished from many other substances, if not from all." Probably, I think, from all.

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I greatly fear that it is "Spirit" that has eluded my observation in what is said above. There is evidently believed to be the sort of fact in regard to "Spirit" which used to be called self-consciousness. Self-reflection seems to be reminiscent of those peculiar situations in idealism when the subject and the object disappear and yet remain, are two and yet one. This, however, does not seem necessary as a conclusion to the argument in regard to substances, relations, and qualities; and is, perhaps, the part of Dr. McTaggart's philosophical outlook which is *not* characteristic of the dominant outlook at Cambridge.

Professor Whitehead is one of those few philosophers who can make out a good case for a statement which he does not accept. His science always seems to keep in view other issues besides those with which it is at the moment concerned; and, therefore, although he does not claim to have produced a complete philosophy but only a "philosophy of nature," he seems to have established the basis of knowledge of all matters of fact. The book called *The Concept of Nature* is based upon lectures delivered in Cambridge in November, 1919; and it forms a supplement to the earlier book called *An Enquiry Concerning the Principles of Natural Knowledge.* "Nature", in this sense, Professor Whitehead says, "can be thought of as a closed system whose mutual relations do not require the expression of the fact that they are thought about." This "excludes any reference to moral or aesthetic values whose apprehension is vivid in proportion to self-conscious activity," but Professor Whitehead in making this exclusion does not underrate the importance of that which he excludes. "The values of nature are, perhaps", he says, "the key to the metaphysical synthesis of existence." Thus it may be possible, in making out the characteristics of nature as matters of fact, neglecting goodness and beauty, to discover truths about nature which may be supplemented and yet not displaced or disproved by a more inclusive philosophy.

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The fundamental entities disclosed in nature for sense-awareness are events, but there are other entities also disclosed. This division seems to be similar to the old-fashioned division of "matter" and its "qualities"; and, therefore, that "bifurcation of nature" must be shown to be misleading. "The philosophy of nature took a wrong turn during its development by Greek thought" (*Concept of Nature*, p. 24); and there is no ground for the philosophy, commonly accepted by scientists, which assumes a "matter behind appearances or appearances which have in them 'psychic additions.'" The positive philosophy of Professor Whitehead depends upon the conception of Nature as a process (pp. 53 f.). It is like Bergson's conception of time, but Whitehead's "passage of nature" implies that what is usually called "time" is only one aspect of this "passage." This passage includes durations which, as events, "cover" or include other events; and each event is "the specific character of a place through a period of time." One event is delimited by the event which extends over it. There are "sets" of durations or events so related; and the laws of nature are the observed characteristics of the entities in nature. Each event is unique and each is what it is as a factor in the whole, which is nature. Objects are ingredients in the character of events which can "be again."

The details are obviously most important, but the general result from our present point of view is the rendering of perceived reality in terms of one order, that is to say, without any distinction of appearances from reality. The relations, however, of the elements of nature are shown to be complex and intricate, and distinctions and differences are shown to be equally as real as similarities. Beyond the purview of the philosophy of nature lie "percipient objects" or minds, observable in nature through "rhythms."

In the third of his recent books, *The Principle of Relativity*, Professor Whitehead publishes some of the lectures he delivered in America. The first part of the book is philosophical and

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must be taken into account by all who attempt to deal with the metaphysical assumptions underlying ethics or social philosophy; but the second part of the book is purely mathematical. The second chapter on the "Relatedness of Nature" is a statement applicable outside the restricted field of a philosophy of nature, and is an admirable corrective of the tendency of scientific realists to what Bergson would call "cinema vision." But that such vision is not essential to a realist outlook is shown by Professor Whitehead's rendering of the relation between the "factors" of fact and of all factors and each factor to the fact. Significance is the dominant conception; thus "Universals are significant of their particulars and the particulars are factors exhibiting the patience of fact for those universals" (p. 26). But here we are in the region of an inclusive philosophy, referring to more than nature only.

Professor Broad, who has now taken Dr. McTaggart's place at Cambridge, develops more fully his general philosophy, although he, too, is chiefly concerned with the philosophy of nature. His book *Perception, Physics, and Reality* is a rehabilitation of the assumptions of physical science, against the attacks of Idealism and Phenomenalism. He makes continual reference to "common sense," especially as the historical ground of many of the assumptions of physical science; and it may therefore be worth while to consider what Realists mean by common sense. Of course, if it were certain to be taken to mean the real basis for ordinary thought and action, as distinguished from the thought of philosophers, there would be no difficulty in "placing" common sense as the Realists do. But what is the real basis for ordinary thought? That is the fundamental problem, and common sense is a quasi-philosophical answer to that question. Common sense is a series or a system of statements; and, although they are common and traditionally easy to accept, they may not be true. It seems, therefore, that common sense cannot very well be taken as a *criterion*, though it may be used as a starting-

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point. It contains so varied a collection of statements about things and qualities that it may be useful to a philosopher, precisely because philosophy has no particular starting-point but may begin anywhere. The danger of using a continual reference, however, to common sense is that one tends to assume or create a coherence or consistency among the statements of common sense which is not necessarily to be found there; and as a result, the phrase, which began by meaning simply the ordinary man's expression of his point of view, ends by meaning a system of philosophy, not unlike medieval scholasticism. I do not accuse Professor Broad of having thus transformed the meaning of the phrase "common sense,"[1] but perhaps the tendency toward this transformation will explain the historic fact that modern Realism seems to take up again the tradition of logic and exact analysis which has been somewhat obscured since Descartes. Dr. G. E. Moore, Mr. Bertrand Russell, and Professor Broad seem to be nearer to the attitude of Aquinas, Scotus, and Ockham than they are to the attitude of Kant and Hegel.

In the development of his philosophy Professor Broad begins by considering the argument against naïf realism which is independent of the causal theory of perception. This is a consideration of "things" having qualities and relations. The arguments of Berkeley and such philosophers are shown to be often quite futile and they do not make naïf realism quite impossible, but in order to escape their force such realism would have to assume "an immensely complicated world of largely imperceptible reals" and therefore we are driven to explanation by reference to causation. The opposition to the idea of cause among philosophers is largely based upon the objection to activity transient from a cause to an effect; but this activity Broad rejects. It is sufficient for science if causal connection means observed regularity in the concurrence or succession of two or more events; and against

[1] Indeed, Professor Broad definitely differs from common sense in dropping the conception of "activity" as an explanation of cause (p. 130).

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this conception of cause the arguments of Hume, Lotze, and Bradley are not valid.

Causal laws are "regularities connecting together the simultaneous or successive states of things (p. 129); but not all regularities are causal. The succession of day and night is not causal, because it is analyzable into other regularities and the results of the analysis are causal laws. But do not causal laws differ from other regularities because they are "necessary"? In a sense this suggestion is met by noticing that the laws resulting from analysis of non-causal regularities are less conditional, and therefore more "necessary" than the regularities they explain. But those who expect necessity in a causal regularity seem to demand more. Professor Broad shows that the necessity of cause is simply the invariability of a series of events in regard to which other series are irrelevant, "the permanent structure of the material universe remaining permanent," and thus a causal law gives probabilities, not certainties, of the occurrence of events. For so far as it is applicable to future events, the law of causality is the fact that the probability of a future event's occurring is strengthened by the occurrence of certain other events. Against phenomenalism, such as that of Mach's school and of some scientists, it is argued that it is helpless in explaining or anticipating perceptions, for it would have to refer to "causes" of perceptions which are not themselves perceptions. Broad then passes to the causal theory of perception and asks whether the fact that color, for example, is relative to the seeing eye proves that there is nothing like color really in existence, "causing" us to see thus. Can anything we see "continue to exist" when we do not see it? Now it can be shown that it is reasonable to say that whatever is seen is there to be seen. If you see one shape and I another, both are in some sense there to be seen; but in what sense are they "there"? Some things are accepted as real as seen, others are thought to be not really but only apparently as seen. In the second case the real, which is *not* seen, is the cause which makes us see. Thus

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the real cause of a drunken man's vision is the alcohol, but the vision of rats is illusion because the remote cause of rat-vision is not present. There are, then, "real counterparts" of the figures which people perceive. Among these real counterparts or their relations are the so-called laws of mechanics, and the principle of relativity has done nothing to shake the security of the proof that these exist quite apart from being perceived.

It remains only to note that Mr. Johnson's two volumes on logic, although not at first sight a departure from the traditional, do in fact contain a statement of the logical principles involved in the new philosophical outlook. Here, of course, the principles will apply as well to ethics and aesthetics as to sciences of "fact"; and Mr. Johnson very well says, "The substitution of causal description in the place of evaluation of standards has been woefully common in works which profess to found ethics upon psychology or sociology" (*Logic*, I, 226). Thus the new attitude may eventually result in an analysis of values which would supplement the already subtle analysis of matters of fact.

The most important contribution to thought which the Cambridge philosophers at present have to offer is that intellectual integrity and patience which has proved to be valuable in the physical sciences. Philosophers have often been in such a hurry to complete a system or to connect all sections of knowledge that they have made absurdly indefinite general statements, such as: "All is water" or "All is Spirit." Now, if every step is tested and every method criticized, we may be able to make correct philosophical statements in regard to real objects, such as hats or heads, without being called upon to dissolve our knowledge into an Absolute. The sciences have progressed by division and specialization, and although philosophy is not one of the physical sciences, it is a science. That is what the Cambridge philosophers imply in their attitude.

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LEGAL FICTIONS[1]

RAPHAEL DEMOS

The field of law provides a rich soil for philosophical students and yet strangely enough it has been neglected by philosophers to a great extent. Of course, many of them, and eminent ones at that, have speculated and written on the philosophy of law. But their treatment has touched only the very formal and most abstract phases of law, leaving aside all the concrete and specific detail which invests law with its peculiar flavor. It cannot be denied that the treatment and criticism of science and religion by philosophers have been much more detailed and to the point than their contribution to the analysis of law. Yet law is a human institution with roots thrown deep into human nature; it is an embodiment of the collective insight of humanity on matters both of conduct and of theory that are too important to justify neglect by the philosopher.

Though legal writers have treated the topic of this paper at considerable length, they have confined themselves to its strictly legal aspects; and my purpose in this article is to consider legal fictions in their more general features. But I must preface my remarks with a brief account of legal fictions as legal phenomena.

I

An unsophisticated person, on being first introduced to the subject of legal fictions, is apt to be bewildered and even shocked. He is confronted with legal situations in which the court overcomes an obstacle apparently by simply denying its existence. To quote a learned author,[2] it often happened in

[1] The substance of this paper was read at a meeting of a seminary in jurisprudence conducted by Dean Roscoe Pound, of the Harvard Law School, to whom I am deeply indebted for valuable suggestions and criticisms.

[2] Jhering, *Geist des römischen Rechts*, IV, 158.

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Roman law that "to efface the unfavorable consequences of an emancipation, it was declared not to have happened—a daughter was proclaimed a son, a stranger was declared to be a citizen so that he might be given the right of inheritance, and children were attributed even to the chaste Diana." Plaintiffs have been allowed to make statements glaringly untrue which the defendants were prohibited from controverting. Notorious is the fiction that was employed for the sake of providing a remedy in England for a wrong done in the Mediterranean, whereby it was agreed in court that the island of Minorca is in London, in the parish of St. Mary Le Bow, in the ward of Cheap. It must not be assumed that legal fictions are just an instance of the many picturesque practices to which our ancestors were addicted. Even today, in England, an action arising out of seduction must take the form of an action by the father for the loss of his daughter's services.

One does not need to analyze very far in order to discover that the term, legal fiction, covers a bewildering variety of situations, the common factor in which is that the court in its official capacity allows, in certain circumstances, statements to be made which are known by it to be strictly false. It is impracticable to attempt to enumerate all the different cases of legal fictions, and I will confine myself to a selection of those that illustrate most clearly the important types.

Technically speaking, no fictions were employed by the Roman courts; nevertheless, fictions were there in all but an explicit form. Under the praetors, the law was extended and reformed so that persons to whom previously their rights had been denied—as, for example, foreigners and women—were protected and the rigors of the ancient barbarous legislation were mitigated. The changes related to succession, usucapion, citzenship, status, delivery, contract, etc.; and the procedure by which these changes were effected was roundabout indeed. Thus, a praetorian (not a civil) successor had no direct action and could not claim ownership to things belonging to the

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deceased. In order to avoid this injustice without at the same time appearing to reverse the law, the praetor expressed the mandate to the *judex*, or arbiter, who tried the case in the following form:

> Supposing Aulus (the plaintiff) were the civil heir of Lucius Titius, if that implies that the land in question ought to be his by the law of the Quirites, then render such a judgment.

Again, an alien had no legal rights, so that the court had to pretend he was a Roman citizen or rather treated him as though he were one, in order that suits by him or against him might be taken. Thus in Roman law nothing contrary to fact is actually alleged but such a judgment is rendered as could be defended only upon assumptions contrary to fact. To mention an example, according to Austin[1] the praetors took upon themselves to set aside wills by which fathers disinherited their children, on the fictitious pretext that such fathers could be nothing but insane. First, when the children were entirely passed over, the testator was pronounced to be insane; and finally, the same conclusion was drawn if he did not leave to each a certain portion. But in this case, too, the fiction appeared in the form of a tacit assumption and not explicitly.

In English law, legal fictions appear in quite a definite shape and in a great variety of situations. A most interesting example occurs in connection with claims for land. Supposing Jones claims land from Smith, Smith being in possession; then, instead of suing Smith, Jones causes a suit to be brought by one John Doe in which it is alleged that Jones had leased the land to Doe for a term of years, that Doe entered upon the premises, that then, one Richard Roe (known as the casual ejector) invaded the premises and with swords and knives and staves ousted Doe from the land. At the same time, Jones served on Smith a copy of the suit along with a letter purporting to be written to Smith by his "loving friend," Richard Roe, saying that unless Smith appeared as defendant Roe would suffer judg-

[1] *Jurisprudence*, II, 637.

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ment to be entered against him. Now, in point of truth, Doe and his leases, Roe with his knives and swords and staves, were all creatures of the imagination; but the court would not let Jones in to defend his suit unless he would confess lease, entry, and ouster. As a result, instead of Jones and Smith explicitly fighting it out among themselves, they were made to set up a couple of fictitious persons between whom the suit was alleged to take place. This fictitious proceeding was brought over to this country and prevailed everywhere in the Colonies except in Massachusetts and New Hampshire. The fictitious Doe changed his name to Jackson in New York and to Den in New Jersey.[1]

English law provides, further, instances of fiction in jurisdictional matters. The Isle of Minorca fiction is a case in point. Take another example: In the King's Bench it could happen that a defendant found himself compelled to admit that he was arrested for trespass when he was sought only for debt. This was because the King's Bench had no jurisdiction over cases of debt except when the person was in the custody of the marshal or prison-keeper of the Court of King's Bench. The plaintiff, therefore, alleged that the defendant had been arrested for trespass and was in the custody of the marshal. The allegation was false but the defendant was prohibited by the court from contradicting it. The Court of Exchequer extended its jurisdiction to similar cases by resorting to a different fiction. The plaintiff pretended to be the king's debtor and alleged before the court that by reason of the withholding by the defendant of the plaintiff's due, he, the plaintiff, was the less able to discharge his debt to the king. This, of course, was false.[2]

We now pass to fictions of the type of presumptions. With these fiction assumes a certain official status, for the court itself adopts them explicitly as rules of evidence. The most familiar of this class is the fiction that everyone is presumed to know the

[1] See Gray, *Nature of Law*, p. 34.

[2] Cf. *ibid.*, p. 32, which I have followed closely in my account of jurisdictional fictions.

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law. Consider another instance. In order to make a man responsible for the natural and probable consequences of his acts, *whether he intended them or not*, the court presumes that every man does intend such consequences. The court recognizes liability in case of fraud, but in order to create liability irrespective of motive and simply for consequences as such, the court introduced the fiction of constructive fraud by means of which fraud is presumed in certain specific cases where no fraud is known to have occurred. Such fictions do not form part of law but are presumptions of fact which the law sanctions or allows the jury to act upon. In certain cases they are even binding upon the court. Take the presumption that the members of a corporation are citizens of the state in which it was incorporated—a fiction which was adopted for the sake of extending the jurisdiction of the federal courts over corporations, irrespective of the citizenship of their members. Now, a foreign subject took advantage of this fiction in order to circumvent the California law, allowing mining claims to American citizens only, in the following way: He organized a corporation in another state and then pleaded before the California courts that he is an American citizen because he is presumed to be a citizen of the state in which the corporation was organized. His plea was accepted. This fiction leads to extraordinary complications. Gray cites the following case:

> The Federal courts take cognizance of a suit by a stockholder who is a citizen, say, of Kentucky, against the corporation in which he owns stock, which has been incorporated, say, in Ohio. Since he is a stockholder of an Ohio corporation, the court conclusively presumes that he is a citizen of Ohio, but if he were a citizen of Ohio, he could not sue an Ohio corporation in the Federal courts. Therefore the court considers that he is and he is not at the same time a citizen of Ohio and it would have no jurisdiction unless it considered that he both was and was not at the same time a citizen both of Ohio and Kentucky.[1]

Yet not always is a fictitious presumption binding upon the court; the following is a case in point: In the English courts

[1] *Ibid.*, pp. 174-75.

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divorce could not be granted except on grounds of affinity, impotence, or absence of consent. This worked hardship to people who desired divorce on other grounds, and the courts came to the rescue by simply *presuming* impotence whenever one spouse refused to live with the other for a period of three years. But in a recent decision by Sir Samuel Evans the fiction was boldly cast to the winds. To quote from the *Solicitor's Journal and Weekly Reporter*:[1]

> In a case of refusal to consummate, persisted in by the wife for a period of a year, coupled with a clear statement on her part that she never would grant the husband conjugal rights, Sir Evans has definitely granted the latter a decree of nullity, while refusing to draw an inference as to incapacity which he believed to be unreal. Since in a case of this kind no appeal is at all likely, either in this or in any similar case hereafter, the precedent is almost certain to become binding and effective.

Of all these fictions mentioned so far, it may be said that they are fictions concerning the facts of the case. Another important class includes fictions concerning the law according to which the case is tried. Following Dean Pound,[2] we shall call these *general* fictions in contrast to the others, already discussed, which we shall name *specific* fictions. A good example of a general fiction is spurious interpretation whereby, under the pretext of unfolding the significance of the law, the judge makes new law whenever the old law is imperfectly conceived or enacted. Take the body of law known to the Romans as the *Responsa Prudentum*, or the "Answers of the Learned to the Law"; these consisted at first exclusively of collections of opinions interpretative of the Twelve Tables. In point of fact:

> Books of Responses bearing the names of leading jurisconsults obtained an authority at least equal to that of our reported cases, and constantly modified, extended, limited or practically overruled the provisions of the Decemviral Law.[3]

[1] August 23, 1913. [2] *Columbia Law Review*, VII, 383.

[3] Maine, *Ancient Law*, pp. 32–33. Austin, however, dissents from the view that the *Responsa Prudentum* constituted law; see *Jurisprudence*, II, 560 ff.

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Equity presents an analogous case with differences. Whenever an equity rule supersedes a common-law rule, in appearance the latter is left intact and unabrogated. But in case an attempt is made to enforce it by action, the chancellor issues an order restraining the plaintiff from pursuing his legal demand. Hence, in substance, the old law is abolished and the claim of its persistence is a fiction. Praetorian legislation or the *jus praetorum* under the Romans presents a similar type of fiction. The *jus praetorum* consisted of the rules which the praetors introduced into the *jus civile* through their edicts. However:

> If the Praetor gave a right unknown to the *jus civile*, he did not give that right explicitly and directly. He promised or declared, through the medium of his general edict, that, in case any party should be placed in a certain position, he, the Praetor, would give him an action, or would entertain an action if he should think fit to bring one. If the Praetor abolished a rule which was parcel of the *jus civile*, he did not abolish or repeal it formally or explicitly. He promised or declared, through the medium of his general edict, that in case an attempt should be made to enforce the rule by action, he would empower or permit the defendant to *except* to the plaintiff's action, or to defeat the plaintiff's action, by demurrer or plea.[1]

Another general fiction is the law of nature, by appeal to which equity rules have been introduced into the system of law. And with the Romans, it was alleged, or anyhow assumed, that there was a code of nature, universal to all nations, a law which "natural reason appoints for all mankind," and that the praetorian edicts were simply attempts to introduce this law of nature into Roman jurisprudence.

Thus, fiction enters into the fabric of law as such, particularly in Anglo-Saxon countries. The body of law was continually being modified and extended by means of judicial decisions, yet, owing to the ancient theory that judges do not and cannot legislate, the alteration was disguised as an interpretation of the existing system of law, or as an application of the alleged law of nature.

[1] Austin, *op. cit.*, p. 619.

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All the fictions so far mentioned may be conveniently classified as historic fictions (to borrow the well-known phraseology of Jhering). They are historic in that they are instruments for changing the law, and this character is indeed their *raison d'être*. Consequently, they may all be regarded as expressions of one dominating fiction, namely, that the law has not changed; for, in every instance of a historic fiction we have two things invariably: the fact that the law has changed and a specific fiction concealing that fact.

Another group is that of dogmatic fictions; these are employed not to bring in new law but to arrange established doctrines under logically suitable headings. When two different situations have identical legal consequences, it is convenient to classify them as one. The most discussed instance of dogmatic fictions is that whereby a corporation is designated a person. Thus corporations are said to have nationality, are treated as alien enemies, are known as inhabitants, and are granted diplomatic protection. No metaphysical considerations are involved; the fiction does not lie in the assumption that the corporation is a new individual over and above its members. For, even supposing that the corporation is an individual over and above its members, we still have the fiction describing this individual as a person. The fiction is due merely to the fact that a corporation is granted rights and duties by law identical with those of a person;[1] and instead of entering corporations and persons under different headings, law finds it more suitable to enter them under the same heading. There is no intention at all to conceal the fact that new law has been added. Other examples of such fictions are fictions of relation whereby the act done by one is regarded as that of another, as, e.g., in the case of servant and master, or of a normal person and the feeble-minded individual whose trustee he is. Then, there is naturalization, adoption, legitimization, the

[1] Within definite limits, of course; thus, a corporation may not be elected to the legislature or become president of the United States.

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fiction that the criminal is legally dead, the fiction of extra-territoriality, the fiction whereby property is constituted into a juristic person, as in the case of the German institutions known as *Stiftungen*, etc.

Dogmatic fictions exhibit the operation—in the field of legal thinking—of what, in the older psychology, was called apperception. For example, to designate a criminal as legally dead is to bring him under a concept (that of death) already in use, and this because crime presents analogies, in its legal consequences, with death. One might perhaps say that it is like the case of the child who calls other men papa because they too wear whiskers like its father. However, the simile is imperfect, for the dominating concept is itself modified and enlarged in the process of apperception. A more appropriate analogy would be one from the field of economics, as when the term "capital," originally meaning money, is later enlarged to cover machinery, and still later such intangible entities as knowledge and inherited capacities that contribute to production. Similarly, one might say that, within the field of law, the term "personality," starting to mean "individual persons," grew until it now embraces all situations entailing certain definite legal characteristics.

Lastly, there is a class of fictions which came about as agencies neither of change in law nor of the establishment of logical order in legal thinking; these we shall call formalistic fictions. Take the following fiction in declarations in trover. In English law, when the plaintiff seeks to recover stolen property or, at any rate, property in the possession of someone else, he must file a declaration specifying that he lost the property *casually* and that the defendant found it. The actual form of the declaration is as follows:

> . . . . And being so possessed, the said plaintiff . . . . on the day and year above-mentioned . . . . casually lost the said goods and chattels out of his possession; and the same afterwards . . . . came to the possession of the defendant by finding. Yet the said defendant well

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knowing the said goods and chattel to be the property of the said plaintiff . . . . but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff in this behalf hath not as yet delivered the said goods and chattels . . . . to the said plaintiff.[1]

And an American report of the nineteenth century speaks of the plaintiff having casually lost one hundred freight cars, and of the defendant having casually found them, as though it were a handkerchief that had been lost and found. Of course, the real trouble was merely a dispute as to the ownership of the freight cars.

Whatever the factors which necessitated the use of this form in declarations in trover, we must resort for its explanation, to some extent at least, to that universal human failing for hocus-pocus, circumlocution, and formalism— the same quality which calls for the elaborate ceremonialism of initiation and of election to offices, or to the ritual of religion and patriotism. An analogous symbolic fiction is that employed by the sheriff, in Massachusetts at any rate, when he "attaches a chip" from a certain piece of property in order to symbolize his taking control of it. And in more ancient times, when a farmer sold his land, he used to bring along a clod of earth taken from his own property and to deposit it on the ground before the buyer. In fact, there exists quite a group of what Jhering calls "apparent transactions," which, in the field of action, manifest the same motive of symbolism which the fictions now being considered exhibit in the field of legal expression. Of these we might say that whatever the causes of their appearance, their persistence is due to the love for form as such; just as love for form is the cause of the persistence of the symbolism of monarchy in England after the destruction of its power.

In looking back upon this survey of legal fictions, we find that certain specific types have emerged. We have classified all fictions into historical, dogmatic, and formalistic.[2] We

[1] Chitty on *Pleading*, pp. 835–36.

[2] It will be noted that our classification differs from that of Jhering, who divides fictions into historical and dogmatic only.

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have distinguished historical fictions into general and specific, and we have divided specific fictions into those recognized officially as rules of evidence (such as presumptions) and those not so recognized, as, for example, jurisdictional fictions, fictions of ejectment, etc.

II

I will now discuss the causes that brought legal fictions about. Let us take historic fictions first. Law, at the time of the Romans, failed to provide for aliens; as with the Athenians, citizenship was a privilege jealously guarded by the families of the original settlers and conquerors. But as the domain of the Romans increased, the numbers of the politically disqualified became threateningly large, and so strong was the pressure of these *peregrini* that the law could no longer safely neglect them. To meet the emergency, the praetors invented the fiction of citizenship for the aliens. Then there was the pressure exerted by relatives, who were not blood relatives, for the purpose of securing rights in matters of inheritance; the result was that all persons to whom the praetor thought it just that man's property should go, such as relatives on the mother's side, came, by a fiction, to be considered heirs.

English law went through very much the same process. The problem was how to do justice to the poor as against the rich, to the people as against the land-owning barons, in face of the injustices of the strict law, with the judges serving as champions of the people in the matter of land tenure and ownership. The original grant of land from the lords to their tenants was for life only, and land could not be alienated without the consent of the lord. By mutual agreements, however, estates were permitted to descend to the lineal heir. Aided by a fiction, the courts were able to extend the right to collateral heirs as well, by presuming that all collateral relatives were of the blood of the first donee; this fiction did away with the lord's reversionary interest. Later, the right to alienate in the life of the vassal was made secure by the judges, who resorted to a

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distinction between alienating lands—already prohibited by law—and alienating tenure. By the aid of such fictions, the courts succeeded in withstanding the efforts of the landowners to erect a system of perpetual entails, and transferred the dominion over land to the people.

The fiction of the casual ejector appeared under similar circumstances. Under the feudal system, the tenant was altogether without means of redress when dispossessed of his land by the act of a stranger not claiming under the grantor. In time, a writ of trespass was invented which gave the tenant damages for the injuries he sustained, but did not restore to him possession of the term. So, it became the practice of leaseholders to apply to the courts of equity for redress, and the courts would compel a restoration of the land. The courts of common law soon adopted this method until it became the recognized method of redress for leaseholders. Now, the freeholders, in their desire to avoid the innumerable difficulties attending real actions, sought to employ the same remedy in settling questions of disputed title, but before they could properly invoke it, they had to become leaseholders.

> It was a term that was to be recovered in the action and it was therefore necessary that a term should be created; and as the injury complained of in the writ was the loss of the possession, it was also necessary that the person to whom the term was given should be ejected from the lands.[1]

To obtain these requisites, the freeholder, at first, leased the disputed lands to another person for a term of years and then had him ejected by a third person. Gradually, however, these forms were dispensed with; no ouster was made and no third parties were called in and only the fictitious allegation of the proceedings remained.

But not all fictions came about in the interests of democratic justice. The cause of jurisdictional fictions was the

[1] Adams, *Treatise on Ejection*, p. 10. Chapter i of this book gives a detailed account of the history of the action of ejectment.

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cupidity of the judges, who, according to the custom of their day, were paid by the case, as doctors and lawyers are paid today, and who, therefore, had everything to gain by extending their jurisdiction. With respect to this class of fictions, the Marxian philosophers have their innings; for undoubtedly the cause of these fictions is purely economic.

The fictions considered so far are specific; general fictions, such as equity, natural law, and spurious interpretation coincide with that period in the growth of law when the judicial institution came under the influence of powerful forces outside it, such as public opinion and moral ideas. Impressed with the many defects of the administration of justice, the lay public sought to reform the legal system. The tribunal of the king's chancellor was the chief medium through which the revivified moral conscience worked to moderate the harshness of the strict law. And the judges themselves, sensitive to the popular reformist impetus, resorted to spurious interpretation and the fiction of natural law in order to adjust the strict law to this new situation.

Dogmatic fictions appeared for the most part in the period of the maturity of law, after Roman law had absorbed the ideas of stoic philosophy, and English law had come under the influence of canon law. It was necessary that the work of absorption should be followed by that of assimilation and systematization, and dogmatic fictions proved convenient tools for the purpose. The pressure, in other words, came from the motive of logical organization and symmetry—a motive which has been serving as a fertile source of fictions since that time.

To sum up the foregoing brief historical survey, the following seem to be the causes of legal fictions: (*a*) the process of change and improvement in the law, stimulated from either within or without the legal system, and (*b*) the need felt for organizing the new material in law.

But this explanation is not adequate. It is not enough to say that historical fictions have appeared in response to the

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need for change; the problem still remains why fictions rather than some other agency were selected as instruments for the required change. In other words, our historical analysis is external, so to speak, and fails to correlate fictions with the character of the legal institution. To supply this omission, we will now proceed to a consideration of fictions as sociological phenomena.

Why, then, did the courts have recourse to fictions? To answer that it was because the judges were without authority to make the necessary changes in the law outright is not enough; for, then, one wants to know why the judges were prohibited from modifying the law. At the root of the matter lay the professed doctrine that law was unalterable because it was a perfect thing, suitable for all contingencies. To quote from Professor Maine:

> When a group of facts come before an English Court for adjudication, the whole course of the discussion between the judge and the advocate assumes that no question is, or can be, raised which will call for the application of any principles but old ones, or of any distinctions but such as have long since been allowed. It is taken absolutely for granted that there is somewhere a rule of known law which will cover the facts of the dispute now litigated, and that, if such a rule be not discovered, it is only that the necessary patience, knowledge, or acumen is not forthcoming to detect it.[1]

And further:

> Nothing is more distasteful to men, either as individuals or as masses, than the admission of their moral progress as a substantive reality. . . . . The movement of the collective opinion of a whole society is too palpable to be ignored, and is generally too visibly for the better, to be decried; but there is the greatest disinclination to accept it as a primary phenomenon and it is commonly explained as the recovery of a lost perfection—the gradual return to a state from which the race has lapsed.[2]

But why this assumption that law is adequate in all respects —why this distaste for admitting moral progress? The an-

[1] *Ancient Law*, p. 30.

[2] *Ibid.*, pp. 67–68.

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swer must be sought in the nature of the legal system. Law is a "necessary" institution in the sense that like the family and the church it exists in practically all human communities. The authority of an institution over its members depends on various factors like force and consent, but primarily it rests on prestige. Because of the great importance of "necessary" institutions for the welfare of the human race, society is apt to enhance their prestige by investing them with the halo of sacredness. Thus, it pictures law as the embodiment of the law of nature, as something out of time, eternal like a platonic idea, as something perfect and not subject to change, just as people represent the sources of authority in religion as perfect, e.g., the pope as infallible and the Bible as divinely inspired.

Further, it must be remembered that any institution is an instrument to preserve the accumulated inheritance of the past, and is therefore conservative in essence. Especially is this true of law, which changes much more slowly than the purely political structure. Wars of nationality and revolutions affect the political situation through and through, but, in most cases, they leave the legal structure intact. Now, an institution pursues the end of conserving the past by stimulating an attitude of reverence toward tradition, and more particularly by painting the past with the glowing colors of perfection.

Nevertheless, an institution is part of a constantly changing world, and change outside makes change within imperative. In fact, the history of an institution may be fruitfully regarded as the outcome of a conflict between the forces of stability and those of progress. The recourse to legislation represents an attempt to alter the legal system from without, and as such has been resented by the members of the judiciary. Methods which respect the autonomy of the system are more welcome; it is only natural, therefore, that statute law should be of minor significance when compared with common law. But whatever the methods, progress must proceed, as far as possible, without shaking the authority of the past; and it is to meet this require-

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ment that the reform of any institution, whether it be of the church, of morals, or of law, is advertised as a return to the purity of the sources or to the natural state of man or as the recovery of a lost perfection.

Legal fictions constitute a solution of the conflict between change and stability which takes full account of the foregoing conditions. In other words, they provide for autonomous change, and they also avoid shaking the authority of the past. Thus, equity and *jus gentium* represent the judiciary reforming itself from within, like an organism which cures itself by its own powers of recuperation. The fiction of spurious interpretation, whereby the new is represented as already involved in the old, fulfils the condition that the authority of the past must not be challenged. In general, legal fictions represent a compromise between the progressive and the conservative forces in law, in which the former yield the form in order to gain the substance.

It is clear that legal fictions are but a variety of those forms of social expression which consist in glossing over unpleasant facts in order to avoid injury to *amour propre*. Examples of such conventional lies are the habit of requesting a man to resign in order to spare him the indignity of dismissal, the English custom of raising a man to the peerage in order to remove him gently from the field of political activity, or the political fiction employed by the allied powers when they insisted on hoisting the Turkish flag over the island of Crete while granting its inhabitants substantial independence.

These facts about fictions furnish material that should be of interest not only to the sociologist but to the psychologist as well. In so far as legal fictions entail humbug, they seem of a piece with the mental process which Freud has called rationalization. Rationalization exists whenever a mental attitude appears in the field of consciousness *indirectly* or in a disguised form, because it comes in conflict with the standards adopted

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by the individual. Similarly, in the case of legal fictions, we have the fact of a substantial change in the law expressing itself in a disguised form (namely, the fiction), because it comes in conflict with the sentiments of reverence with which the legal institution is regarded by the community. We know that sometimes the disguise through rationalization takes extreme forms; thus it may happen that the process appearing in consciousness is the opposite of the real attitude, as when love expresses itself through hatred. And in law, too, the disguise sometimes goes to an extreme. In the instance of the presumption of impotence by the court in order to facilitate divorce (discussed in an earlier paragraph), at one time medical inspection and medical evidence on oath affirming impotence of the spouse were necessary before the court would presume impotence. Of course, the inspection was fictitious and the evidence false.

Again, with the individual it sometimes happens that the guilty psychological complex is allowed to make no appearance in consciousness at all, but is repressed; and much of forgetfulness is not passive decay on the part of the forgotten idea but deliberate exclusion of the offending memory from the sphere of consciousness. In Roman law, as we have already seen, not even the fiction was allowed explicit formulation in court, but the praetor so stated the question as to exclude all reference to the matters which might create trouble for the court. But perhaps at this point the analogy becomes fantastic.

It would be wrong to suppose that all legal fictions are of the type of social "lies." The fictions introduced in periods when the legislature was functioning could not have been due wholly to a desire to conceal the change in the law; at those periods, the community openly admitted the fact that law changed and went so far as to institute machinery for effecting this change. The primary reason for the appearance of such

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fictions was their practical convenience. Very often the legislature is negligent or perhaps incompetent. Or again the situation may call for an urgent solution, and the legislature may seem slow. So the community finds it more feasible to modify law by means of the courts, through a fiction. This is especially true of the way the fiction of constructive trust came about. It was easier for the courts to assist a person who has been fraudulently despoiled of his property by utilizing the machinery already in existence for cases of violation of express trust than by resorting to new machinery. Hence the courts chose to characterize a person fraudulently receiving property as a trustee and so rendered him liable to the same punishment due to an express trustee guilty of a breach of trust.

Analogous to this type of fiction is the modern expedient of daylight saving; it offers a case where rather than change all the hours of work the community prefers to employ a simple fiction as to the time. Another parallel, suggested by Jhering, would be that of a railroad company which, after having failed to include lignite in its original tariff—now that lignite has become merchandise—treats it as coal in its account-books instead of opening a new heading for it.

In the preceding paragraphs we have considered law as a social phenomenon, and, by the use of appropriate analogies to other human institutions, we have tried to show that legal fictions are normal phases of its development. We have seen that some fictions, e.g., general fictions and many procedural fictions, are aspects of the tendency of law to change, and result from the effort of the legal institution to reconcile change with stability; some—such as presumptions—are convenient makeshifts adopted for the sake of a more efficient transaction of the business of law; some—the formalistic fictions—furnish an emotional outlet for the social consciousness that arises whenever two or three individuals come together; and others, finally —such as dogmatic fictions—issue from attempts to introduce logical order into the legal code.

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III

Are fictions lies? Phelps[1] calls fictions "blundering devices of an unphilosophic age, which has not yet learned to value truth for its own sake." Bentham waxes indignant in his denunciation of them. "Fiction," he says, "is a wilful falsehood uttered by a judge for the purpose of giving to injustice the colour of justice."[2] In another connection, speaking of fictions, he writes: "Swearing, says one of the characters of a French drama, constitutes the groundwork of English conversation. Lying, he might have added, without any such hyperbole, composes the groundwork of English judicature."[3] Elsewhere he defines legal fiction as "the most pernicious and basest sort of lying—lying for, or with, the concurrence and support as well as for the profit of the judge."[4]

Contrast these ebullitions with the following gentle eulogy of fictions by a different writer.

> To us . . . . it is always a matter of extreme delight and refreshment to turn to these exquisite fictions which both adorn and simplify our law; mingling utility with sweetness and tending to the noblest end to which poetry can devote itself—to benefit mankind and render them happy.[5]

Without quite granting that legal fictions are adorned with all these alluring charms, we may firmly doubt whether fictions are lies. Legal fictions are but a species of fictions in general, and though all lies are fictions, not all fictions are lies. Lies are such fictions as arise from an intent to deceive; but who, we may well ask, is deceived by legal fictions? Certainly not the judge, nor the plaintiff, nor the defendant, and hardly the public. The question will be clarified if we investigate the epistemological character of legal fictions.

These are fictions in that they involve the attitude of *assuming*—an attitude quite distinct from that of *believing* and defined with great acumen and clearness by Meinong in his work called

[1] *Juridical Equity*, p. 206.
[2] *Works*, V, 13.
[3] *Ibid.*, p. 92.
[4] *Ibid.*, VI, 582.
[5] *Harvard Law Review*, VII, 250.

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Annahmen. Judge Hand, speaking of the fiction of implied contract, says that the court treats the corporation *as if* it had consented.[1] This phrase "as if" is the verbal symbol of the attitude of assumption. When we assume a proposition, we do not adopt it; we merely contemplate it. For example, we only apprehend but do not believe the assertion, in the arithmetical problem, that "a certain person covered sixty miles in ten hours; how many, etc."; nor do we maintain as true what we affirm in a fairy tale. In other words, in assumption we are emancipated from the feeling of conviction, and we can contemplate the contents of our thought without reference to their truth or falsehood.

Owing to a curious intellectual obtuseness, most people think of assertion in terms of belief primarily, and, therefore, as either true or false; as a matter of fact, an inductive examination of conversation would reveal language to be a medium as much of assumption as of belief. Take social phrases, such as "Good morning" or "Yours sincerely"; take all assertions made in a jocular or teasing mood—certainly constituting quite a large part of conversation; consider also the fact that our relations to one another are based not so much on conviction but on trust, and our relation to the future on hope, and our relation to ourselves on self-confidence; that, in other words, we do not act out of belief but rather upon a hypothesis or a practical postulate. When all this has been taken into account, legal fictions will no longer seem extraordinary and unfamiliar.

It will be interesting to classify assumptions, in general, from the point of view of the motive which calls them forth. Following are the most important groups: (*a*) assumptions made from a logical motive—known ordinarily as theories. Philosophy is almost exclusively a matter of theories; science, too, though involving matters of fact (such as data of observation), consists of hypotheses to a large extent that are assumed for the sake of experiment and preferred for their fertility in

[1] Henderson, *Position of Foreign Corporations*, p. 94.

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consequences. (*b*) Aesthetic assumptions and, more broadly, all propositions assumed because of their intrinsically pleasing quality; these include much of literature, all the pretenses of the play-attitude, and jokes. (*c*) Practical assumptions or propositions assumed for their convenience in the matter of procedure; consider, e.g., the fiction of summertime, and the assumption involved in the attitude of trust as when I find it more feasible to act upon the assumption that people will not betray me than to be overcautious in my relations with them. These we may call postulates of action. (*d*) Assumptions which facilitate social intercourse; these include all so-called "conventional lies." (*e*) Deceptive statements, or genuine lies, form the last group.

Let us now consider the place of legal fictions in this classification. Dogmatic fictions come under category (*a*), or logical assumptions; formalistic fictions come under category (*b*), or aesthetic assumptions; fictions employed for the sake of convenience, such as presumptions, come under category (*c*), or postulates; and general fictions and most procedural fictions come under category (*d*), or under conventional lies.

It is now time to return to the query with which we began this section—Are legal fictions lies? As we saw, none of them come under the category of deceptions. Some of them have been classified as conventional lies, which is quite different from the class of genuine lies. Polite expressions are often untrue, of course, but they are known to be so by the listener as well as by the speaker. Such expressions have not inappropriately been called "falsehoods by mutual consent." And as to jurisdictional fictions, provoked, as we saw, by the cupidity of the judges, they are certainly immoral but not mendacious.

IV

How far are legal fictions justified? Now, a legal fiction is a form of equivocation, and no doubt a straight statement is preferable to an equivocation. Judged from a purely abstract

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point of view, fictions must be declared bad; a different world, containing everything of the present world except the fictions, would be an improvement upon it. But we are dealing with this particular world, and bad as legal fictions are, in this world they have played a useful rôle on the whole. When legislatures were lacking, they enabled the judges to adjust law to changing conditions and to the demands of justice; and they made a systematic organization of legal rules possible. If evils at all, they have been necessary evils. What about the future? Legal doctrine and practice should aim to avoid the employment of legal fictions, as much as possible, for they are makeshifts and compromises. But can they be totally eliminated from the legal structure? We doubt it. At least, this seems clear—they will exist as long as makeshifts, compromises, and conventional lies remain part of our scheme of things.

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PERSONAL IMMORTALITY AS AN ETHICAL PRINCIPLE

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Although this article is not intended to be a direct argument for immortality it may still appear to constitute an indirect argument for that principle. This, I think, is unavoidable; and the reason is instructive. Categories such as personality and moral order are so extremely complex—so highly systematic—that they penetrate very deeply into the ultimate nature of reality. It may be objected that since reality is infinite any such approximation is out of the question; and this is undeniably true. But it must not be taken to mean that "infinity" is identical with vagueness, or with a complete absence of system;[1] rather the contrary; but to pursue this point would lead from the present subject. It need only be remarked that reality obviously manifests degrees of abstraction and of concreteness. With abstraction, mathematics and the physical sciences are competent to deal; with concreteness, cultures such as history and ethics; while as scientific abstraction is gradually transcended the different categories approach one another more and more, so that in the end to consider one is necessarily in some degree to consider all.

But even if this general principle be conceded, a more specific objection may be advanced—that personality, being a form of conscious experience, can be no trustworthy guide to the nature of reality, because, as measured against the scale of the universe, it is among the most transient and limited of

[1] The term "system" is often understood in too mechanical a sense. I am glad to find it extensively employed in Sir Henry Jones's *A Faith that Enquires*. "Every one of our ideas is a system. . . . . Rational experience on the one side, and the Universe on the other, is a system of systems" (p. 324); and so throughout. Cf., also, Professor Pringle-Pattison, *The Idea of God*, pp. 219, 220.

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all forms of development. Thus regarded, consciousness becomes an accidental or even foreign element in the world; but a full discussion of this familiar materialist contention would once more lead to too great a digression. It is, however, altogether illogical to base our estimates of value and of importance merely on the restricted range and limited character of certain phenomena. In recent physics, for example, conclusions of the most vital significance have been reached by the employment of inconceivably minute quantities of material; for in positive ray analysis a few millionths of a milligram suffice to establish results of crucial importance as to the constitution of matter. The physiologist, similarly, finds that the rate of respiration responds to "an increase of one part of hydrogen ion in a hundred million millions of blood."[1] Persistence and magnitude, therefore, are plainly no true indications of ultimacy; and a developed consciousness, despite its apparent transience as compared with the physical universe, may still reveal more of the character of reality.

Still another difficulty is that immortality raises the problem of time. But this may be avoided if by "personal" we mean finite individuality, which is in its essential characteristics identical with humanity, and by "immortality," its persistence —of course in time—after bodily death. What these "essential characteristics" are is, of course, as yet an open question; but it is with these considerations in mind that I wish to discuss the ethical implications of personal immortality.

The distinctive meaning of "ethical" is best expressed, then, as being what pertains to the sphere of duty. Duty, again, may be defined as the relation between person and universe, although this will doubtless appear altogether too vague and indefinite a description of such an intensely practical affair. It is certainly intended to be comprehensive, and from that standpoint a simple mathematical illustration may be helpful.

[1] Dr. J. S. Huxley, *Science Progress* (October, 1921), p. 241. The recent investigation of chemical isotopes may also be cited here.

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We will interpret, then, the familiar expression $y=f(x)$ to mean that $duty=\frac{universe}{person}$; so that just as the value of y varies with the values of x, our conception of duty turns (in the end) on our view of the universe and of man's place within it. Seldom, perhaps, do we express the conception in this way, for we usually employ terms which appear much more definite —society or nation, economic or social status. But in so doing we forget that this definiteness is the result of limitation— it may even be of narrowness and lack of vision; and when our convictions are challenged, we are at once compelled to advance wider bases for them. It is only necessary to carry this analysis far enough to develop some kind of a philosophy of the world and of man's place therein; "scratch a conviction and you find a philosophy." Thus duty, in terms most comprehensive, rests ultimately on the relation posited between man and the universe.

It was pointed out at the outset that the terms of this relation are extremely complex and systematically organized, which means that a large number of distinct factors is concerned in determining the relation itself. As regards the universe, this is at once obvious, for it is the most comprehensive of all our terms. But it may be worth while remarking that the true meaning of "universe" has, in our modern scientific atmosphere, been somewhat lost sight of. We tend to think of the attributes of the *physical* universe—its infinity of expanse in space and duration in time,[1] i.e., of infinite magnitude and unending persistence. But these characteristics do not yield us the real significance of the term; on the contrary, they tend to suppress or contradict it. For "universe" means, essentially, unity—the binding together into one whole of an enormous number of widely diverse elements; and it is because the far-flung and fast-changing constituents of the

[1] For practical purposes this impression is little affected by Einstein's theory of physically finite universe, or by the new views of time.

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material world are thus held together that they form a universe —not because they are infinite in number, extent, and duration. The term's real meaning is perhaps best perceived in the word "university," with its implied ideal of a wide diversity of knowledge unified by a single spirit and directed toward a single end; or again in the logical expression "universal."

But just as the universe is complex, so, in its degree, is personality; and this consideration brings to light the fundamental fallacy of the materialist theory of consciousness or experience as being an accident or epiphenomenon. Certainly a conviction that has held its ground for so long and has been so ably argued is not without some element of truth. But it rests at bottom on the isolation of the phenomena which it professes to explain, and on the neglect to consider them in their essential relation to the totality within which they exist. It may be replied that the direct contrary is true—that materialism is the strictly logical result of affiliating conscious processes to their physical causes, and that it is animism[1] which ignores this inseverable connection, and rests therefore on a false isolation of the phenomena of consciousness. And again this is true, in so far as the connection between psychical and physical is denied or defied. But the real issue turns, not simply on the facts, but rather on their interpretation; for the psychophysical interrelation may be not merely admitted but even emphasized; and the fundamental error of materialism then consists in its failure to relate the entities, thus connected together, according to their true valuation. It is altogether misleading to interpret them merely in the light of their inseparability; they must rather be viewed according to the level which each occupies in the totality of being—to its status in the entire course of evolution.

From this latter point of view, then, the outstanding feature which demands appreciation is the obvious fact that conscious-

[1] I use the term, for brevity, to denote all non-materialist theories in general; "spiritualism" is here too ambiguous.

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ness is the latest phase of development—the final outcome of all previous change. Whatever interpretation may be placed upon it, to deny the fact is simply to destroy the continuity of evolution, and to undermine therefore the very basis of the whole materialistic position itself.

Just as certain physical processes, within an adequately conditioned physical environment, form the basis of vital changes, exactly so—although in neither case can we discover the *modus operandi*—does vitality, developing within its own specific environment, become the foundation of an ever more highly evolving consciousness; and the more this interconnection is insisted upon, the more is it implied that consciousness is the inevitable outcome of material changes, or (conversely) that matter is the indispensable basis of mind.

Now throughout the entire range of physical and vital development, and with so few exceptions that they may be cited in support of the principle, we find a continuous and unbroken advance in the scale of organization. When we take a large-scale survey of all the phenomena, we find that the latest in time are invariably the highest in rank. Organic succeeds inorganic, life the non-living, the vertebrate the mollusc, and the large-brained the small-brained.[1] There is nothing, therefore, prima facie illogical, quite apart from the character of the entities themselves, in extending the scope of this principle and arguing, merely on the ground of analogy, that mind, simply because it is latest in time, is also, and for that reason alone, the highest in status; and that as the earliest physical and vital systems contain, even while they conceal, the potentiality of the later, so the material world as a whole is most truly regarded as the necessary basis of the psychical in all the infinite ramifications of its expansion. It is unnecessary here to fall back on the concept of end or purpose; it is

[1] "There is need for discrimination between the little-brain type, with its climax in ants and bees, and the big-brain type, with its climax in dog and horse."—Professor Thomson, *The System of Animate Nature*, p. 520.

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amply sufficient to cite the facts and the patent illogicality of the refusal to follow the lead of the completed argument.[1]

Only from this viewpoint can the physical and the psychical be assigned their true perspective, and this in such a way that the keen edge of the materialistic argument is turned against itself. This may be regarded as the scientific aspect of the problem; but the ethical implications of our conclusion are equally important. For when we apply the principle in more concrete detail, it plainly implies that, of the two elements within the dual nature of man, the bodily should be subordinate to the spiritual. For, wholly apart from any suggestion of immortality, man is essentially spiritual. This is true, not primarily in any distinctively religious sense, but as mere psychical matter of fact. He is rational, emotional, volitional, on a scale which equals, or even transcends, the hitherto unraveled complexity of his bodily organization. Personality, therefore, owes its complexity to two factors which differ in their evolutionary status, and, therefore, still further, in the degree of their reality.

Now it is incumbent upon ethics to assign to the different elements of personality their proper function in regulating conduct. The principle of degrees of reality, therefore, has its manifest application here. But this must now be allied with another consideration—the possible duration of these various constituents. This criterion is constantly appealed to. The instincts of infancy, the disturbances of adolescence, parental and social impulses, all acquire part of their moral value simply from the length of their active periods. For in this connection duration is essentially a matter of energy, of activity; it is a dynamic, not a passive or static, duration. Nowhere more than in the sphere of conduct does Leibniz's adage apply: *quod non agit non existit.*

[1] This may, of course, be extended still farther, to imply the spiritual nature of reality; but here this is not necessary.

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The persistence of the spiritual individual, then, is a matter of paramount importance, not only for religion, but as a principle of everyday practical ethics; and, in conformity with the ruling complexity of the entire situation, this significance manifests itself in innumerable ways. These may, however, all be summed up as expressions of the fundamental and permanent relation which is posited between our valuations of the spiritual and the bodily aspects of personality. For conduct is governed, ultimately, by the values assigned to each of these elements, respectively; or more truly—because neither can be isolated from its fellow—by the ratio or proportion which is believed to hold between their values. Once more we may fall back on our simple mathematical illustration, here interpreting $y=f(x)$ to mean that conduct is determined by the relation posited between the values of body and soul.

Now whatever may be the worth attributed to them in actual life, it is obvious that their duration must constitute an important factor in forming any final judgment; and once the standpoint has been adopted of considering the ratio between their values, the denial of personal immortality must result in placing soul and body more on an equality with each other than would its acceptance. It may be argued that if—*per impossibile*—purely bodily qualities were held to be more precious than spiritual, even then the mere persistence of the spiritual, and the transience of the physical, would heighten the value of the former—would modify, that is, the ratio between them. Such an argument might be addressed to a highly developed savage, or even, if we strain still further the bounds of possibility, to a ferocious animal; but the fact that the future life of primitive races is only a phantom of their living world rules out any appeal to their religion on this point. But at all advanced stages of culture the denial of individual immortality must tend to equalize the values assigned to body and spirit, by elevating the former and depressing the latter, simply on the score of the equality of their duration.

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But ethics can only do itself justice if, like every science, it traces the results of its principles on the widest possible scale; historically, therefore, rather than parochially. And the actual course of moral development hitherto shows that the belief in immortality has been an extremely powerful factor in maintaining the superior value assigned to the spiritual aspect of personality and the obedience to its demands. This ascendancy has been obtained only after a long and bitter struggle; and no matter how crude a form it may have taken—how material its heaven and hell may have been, or how sensuous its punishments and rewards—the principle of immortality has very largely determined our ruling moral standards. This in itself, of course, does not establish the truth of the principle, but it does prove that that equalization of values, which has just been cited as a consequence of the repudiation of this belief, must imply a reversion to earlier and lower moral ideals—a reversal, that is, of the slow and arduous course of moral evolution—the ultimate subordination of man's spiritual capacities to his bodily needs; in short, a Copernican revolution in the sphere of ethics.

This contention, however, must not be misunderstood, for it by no means implies that the spiritual, as such, would be totally ignored or suppressed—that the results of cultural development would be submerged in a recrudescence of grossness and barbarism. Rather would the inevitable change be more subtle, but, therefore, much more dangerous. Far from being totally neglected, the soul would still be tended and developed, but only in order that it might the better minister to the demands of the flesh; it would become a beauteous odalisque, like woman under the rule of the Turk. There would occur a slow fall of the moral barometer, a steady poisoning of the ethical atmosphere, which would yet sustain a vigorous growth of spiritual fungi.

This conclusion is no preconceived dogma of religion; it is the declaration equally of history and of psychology.

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Moral effort would follow the line of least resistance; it would float with the tide instead of breasting it; and though there would be many striking individual exceptions, the general level of ethical endeavor would imperceptibly, but none the less steadily, fall.

The familiar argument that belief in personal immortality is ethically indifferent, if not indeed positively unethical, is therefore fallacious. Its apparent force springs from a fundamental confusion—the confusion between the mere *existence* of an ethical code of some form or another, and its *character*, its level, its stage of development. A general disbelief in immortality most certainly does not imply the total disappearance of every ethical code, but it does involve the inevitable materializing—and therefore, the slow deterioration—of all ethical ideals. It is even possible that the repudiation of immortality may actually result in an elevation of these ideals, but this would occur only on a definitely limited scale—for brief periods determined by some special and peculiar conditions, such as a reaction from crude doctrines of rewards and punishments, from a Mohammedan paradise or a Dantesque hell. But such instances are obviously exceptional, and do not really affect the principle that, from the widest historico-social viewpoint, moral degeneration attends general skepticism as to individual immortality. "No religion apart from Buddhism," says Dr. Glover, "has permanently held men which had no hopes of immortality";[1] and the ethical significance of this permanence lies in the influence of religion upon conduct, despite the crudeness of its early stages.

For there must always be *some* type of moral standard, since without it no society of any kind—not even the animal herd—could persist. Every community, merely as such, requires some regulation of its members' activities; even the wolf pack has its rigid and drastic code. The real issue, then,

[1] *Conflict of Religions*, p. 68; "even Buddhism," he adds, "became corrupted in this respect."

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turns not on the mere presence or absence of an ethical standard but on the character and level of its development. Considered on the widest possible scale, belief in immortality and the form of the ethical ideal reciprocally mold each other; each, in the long run, purifies and elevates its fellow. Higher standards emerge continuously; and as the character of its heaven advances, so the soul becomes worthier of its true spiritual destiny, until the pure in heart abide in the assurance, whose mystic meaning transcends their understanding, that they shall see God.

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THE EFFECTS OF THE MOTION PICTURE ON THE MIND AND MORALS OF THE YOUNG

JOSEPH ROY GEIGER

I

There are three features of the motion picture, considered as a means of amusement, which must challenge the serious consideration of the student of ethics who reflects on the relation of this institution to the mental and moral welfare of the young. The first of these is the universality of the appeal which the motion picture makes. Available statistics would indicate that no less than 20,000,000 people attend motion-picture theaters every week. Many of these, of course, are "repeaters." But even so, the number of distinct individuals who are reached and influenced by this form of amusement each week must run into the millions. Of this number a large percentage are children and adolescents. And no institution which contributes to the experience of so large a number of the members of society at the most impressionable period of their lives should remain unscrutinized by the moralist.

A second feature of the motion picture which challenges the moralist's scrutiny is the fact that the channel through which its appeal is made is the eye rather than some other of the senses. Visual impressions are, for the majority of people, the most vivid and the most lasting. And the import of this consideration is accentuated by the circumstance that the visual impressions made on the mind of the spectator are always in terms of concrete imagery of the most detailed character. There is a vast psychological difference between hearing or reading an account of a murder, or an assault, or a passionate mutual attraction between members of the opposite sexes, and seeing

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these things actually portrayed on the screen. In the former cases the verbal impressions received must be translated into concrete visual imagery before the facts narrated can be really intelligible and significant. And if the past experience of the spectator does not supply such imagery, the facts will not impress themselves on his mind in any significant or permanent way. There is this much of virtue, then, in table talk and in the newspaper as vehicles of communication: They presuppose a range and depth of experience as a necessary background of the information they impart which immature individuals are not likely to possess. The motion picture, on the other hand, is not so exacting of the young spectator's experience. It leaves little, if anything, to his imagination. Whatever he may lack in the way of "apperceptive mass" is supplied more or less completely by the graphic manner in which actions and events are portrayed. And the vivid, detailed, and permanent character of the impressions thus made on the immature mind is a second important reason for subjecting the motion picture, in its relation to juvenile welfare, to a critical examination.

The most serious feature of the motion picture, however, from the point of view of its influence on the juvenile mind and morals, is the fact that in spite of the preponderance of children, adolescents, and young people among those who attend motion-picture shows, the films produced and the programs arranged, for the most part, contemplate adult audiences. There are exceptions to this rule, of course. Some of the films which have proved most popular among adults have been admirably suited to children. And in some of our city theaters special children's programs are now being presented at stated intervals. This is certainly a step in the right direction. Speaking generally, however, there has not been and is not now any consistent effort on the part of picture producers or exhibitors to discriminate between the interests and reactions of the mature and immature types of mind

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represented by their clientèle. And this circumstance accounts, in a large measure, for whatever unwholesome effect the motion picture has on the minds and morals of the young. It is an urgent reason, therefore, for subjecting this institution to a critical evaluation.

Let it be understood, however, that nothing is further from the writer's purpose than to make any wholesale attack on the motion picture as such, or to deny that it has any value whatever for our children and young people. Its universal popularity among young and old alike is an impressive testimony to the intense and varied forms of satisfaction which it affords. Many of these satisfactions undoubtedly presuppose legitimate interests and needs, and so represent real values. And yet, is there not a danger that we shall accept the fact of these values too uncritically? Is it not possible that the invention, the genius, the opulence, the beauty, the romance, the human interest—represented by the motion-picture enterprise, combine to cast a glamor over its products such that our estimate of the real merits of these products is apt to be more or less biased thereby? The opinion of the writer is that this is just what has happened. We are, as a people, so completely under the spell of the movies that we tend to exaggerate their virtues and to overlook, or at least to minimize, their shortcomings. And this false perspective is particularly unfortunate in its failure to evaluate properly the effects of the movies on the young. Let us see if we cannot substantiate this contention.

II

For convenience, we may classify the values of the motion picture, so far as children and adolescents are concerned, under one or the other of two heads, namely, amusement and education. Considering these in order, it must be admitted that in so far as the motion picture is a source of normal and wholesome amusement, it is a worthy institution. Amuse-

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ment is an end in itself; it exists in its own right. It presupposes definite interests and needs on the part of the individual. And yet, it would seem that some forms of amusement are better or more valuable than others. Certainly this is true of commercialized amusement; that is, amusements provided for the individual by others as a means of profit. Speaking generally, there are at least two conditions which must be met by any form of commercialized amusement if it is to qualify as a real value in the life of the individual. In the first place, it must involve a type of experience which is natural or normal for the individual in question; and in the second place, it must leave the individual in as healthy a condition, at least, after it has been enjoyed as he was in before it was enjoyed.

Now the motion picture does not entirely measure up to either one of these conditions. For, to begin with, the type of experience which it induces on the part of those who enjoy it is, from the point of view of the child, at least, not altogether natural. However psychologists may differ in their explanations of the play of childhood, they all agree in recognizing that play involves activity and self-expression on the part of the child. For Spencer, this activity and this self-expression represent surplus energy discharged along the lines of least resistance. For Hall, they represent the recapitulation of the cultural epochs in the evolution of the race. And for Groos, they constitute a preparation for the serious pursuits of adult life. In all of these accounts of play the activity and self-expression of the child are emphasized as being fundamental. The motion picture, however, cannot be said to encourage the child's activity or self-expression in any immediately overt or creative form. On the contrary, it requires him for an hour or more at a time to be a more or less passive spectator of a series of events, pictorially represented, over the issues of which he has no control. He can, of course, participate in the drama being enacted before him sympathetically through

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his imagination and emotions. And such sympathetic participation on his part may work itself out sooner or later in some kind of overt response. But this is far removed from the sort of activity and self-expression which characterize the play of the child who has not come under the spell of the movies as a form of amusement. Indeed, it will be shown, in another connection, that this lack of opportunity for immediate, overt response to the impressions he gets from the motion picture is a source of positive harm to the child in that the persistence of these impressions in his mind has the effect of prematurely awakening certain of his instinctive tendencies and of inclining him to certain antisocial types of behavior. Here the point is simply that at the movies the child has his amusement provided for him readymade. His attitude is, relatively speaking, passive and receptive. His experiences are imposed on him from without. No opportunity is afforded him for spontaneous and creative activity.

But the motion picture does not measure up to the second condition referred to above as a necessary characteristic of legitimate amusement; its physical and mental effects are not altogether healthful. For example, it is maintained by some authorities that the movies are partly responsible for the eye strain which is so prevalent among children today. Furthermore, the ventilation of motion-picture theaters is rarely, if ever, sufficient to keep the air in these buildings fresh and pure. Again, the hour or more which the child spends in the dark, crowded motion-picture theater is, in too many cases, time which should be spent in outdoor activities. Once more, the pictures shown to children nearly always induce an overstimulation of their imaginations, resulting in a condition of nervous excitement which cannot but have an unfavorable effect on their general health. Finally, many of these pictures convey impressions to the immature mind which are positively morbid and unwholesome and which can easily become the germs of nervous and mental disorders.

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Now, what shall we say as to the educational values of the motion picture? Well, there is no doubt that the motion picture is educating our children, for better or for worse, as much as, if not more than, the schools which they attend. The question is: What is the motion picture worth as a means of education, in the technical and eulogistic sense of that term? No doubt it has some value in this connection, although, so far as the writer has been able to observe, this value is, for the most part, potential rather than actual. We are constantly hearing about the educational possibilities of the motion picture. But there is apparently little or no effort on the part of producers or exhibitors to translate these potentialities into actualities. It is true that exhibitors intersperse the showing of their "features" with an occasional reel of news, scenery, or information of various kinds. These educational "fillers," however, usually constitute an insignificant part of the movie program, both quantitatively and qualitatively considered.

An important consideration to be kept in mind in estimating the educational value of the motion picture is that this method of instruction does not afford adequate opportunities for the application of the materials presented to the child's mind. And this is a serious matter. Reference has already been made to the dominantly passive attitude of the child as a spectator at motion-picture shows. It was pointed out that this circumstance makes the motion picture an unnatural form of amusement, especially where it is permitted to usurp the place of other forms of amusement which involve overt activity and self-expression on the part of the child. But this objectionable feature constitutes a still more serious limitation to the motion picture when it is considered as a means of education. "No impression without expression" would seem to be a cardinal principle in scientific pedagogy. And, it must be reiterated, the motion picture makes no adequate provision for utilizing this important principle. It is not contended that no application is ever made by the child of the impressions he receives

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at the movies. The point is that such applications as *are* made are not subject to controlled conditions; the time, the place, and the manner of these applications are all left to chance association, irrelevant suggestion, and fortuitous circumstance to determine. We shall find reason to believe, as was suggested above, that the delayed and haphazard character of the child's overt reactions to the impressions he gets from the motion picture has the effect of prematurely awakening certain of his instinctive tendencies and of inclining him toward certain antisocial types of behavior. For the present, it is sufficient to note that the sort of experiences induced by the motion picture can scarcely be regarded as a satisfactory substitute for, or even a very desirable addition to, the more formal education which is afforded the child in school.

An educational value commonly assigned to the motion picture is that of giving the child an acquaintance with, and an appreciation of, good literature which he might not otherwise acquire. And it must be admitted that the increasing number of high-class novels, plays, and operas being filmed from time to time and being shown throughout the country at popular prices is a hopeful sign. Many of these productions are of the very highest order; and where one is already familiar with the novel, play, or opera in question, they add considerably to the enjoyment and appreciation which attach to the original. And yet, it is difficult to escape the impression that in too many cases picture producers are more concerned with capitalizing the human appeal and the dramatic force of these classics than they are with creating an appreciation of their artistic merits. Much of the violence that is thus measured out to literary masterpieces is perpetrated under the plea of adapting them to the "necessities of the screen." But if the "necessities of the screen" must be accommodated at the cost of the sort of expurgations, alterations, and adaptations to which many of these literary masterpieces are subjected, so much the worse for the screen. One can only conclude that the motion-

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picture drama is inadequate, to say the least, as a means of inculcating literary appreciation.

The truth of the matter is, however, that these so-called "necessities of the screen" too frequently represent demands dictated by an avaricious policy of exploiting interests on the part of the motion-picture public which have little, if anything, in common with artistic appreciation. That this is the real secret of the reckless disregard shown by many producers of the artistic merit peculiar to the novels, plays, or operas filmed under their direction is illustrated by the character of the titles which the latter acquire as photo dramas. For example, Barrie's play, "The Admirable Crichton," when produced as a motion picture, bears the suggestive title, "Male and Female." "The Bachelor," by Clyde Fitch, becomes "The Virtuous Vamp." The play "Du Barry" is put forth as "Passion." The operas, "La Gioconda," "La Tosca," and "The Jewels of the Madonna," when reduced to photoplays, appear as "The Devil's Daughter," "The Song of Hate," and "Sin," respectively. But the character of the advertising by which these camouflaged classics are "sold" to the public is no less significant. In general, the practice is to seize upon the most suggestive incident, or upon the scene which is susceptible to the most sensational portrayal, and to represent the same in blazing colors on mammoth posters. It matters not that the incident shown or the scene depicted may be insignificant or even irrelevant from the point of view of the logic of the story. Indeed, the incident or scene may not appear in the presentation of the story at all. The point is that the advertiser must "put across" the picture in question at all hazards, regardless of the methods employed or the motives appealed to.

If such practices are defended on the ground that "business is business," well and good. But let us not give credit where no credit is due; at least when the welfare of our children is at stake. That some producers of pictures have made notable con-

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tributions to our literary and artistic treasures no one can deny. And that children as well as grown-ups have profited by these literary and artistic contributions no one will gainsay. But this should not blind us to the fact that the majority of the pictures shown are unworthy as compared with the splendid books young people would doubtless read if their time were not preoccupied and their tastes were not contaminated by these inferior products of the movies. Nor should we overlook the fact that at the present time the majority of those pictures whose themes, whose plots, and whose characters are really worth while are, because of the "necessities of the screen," so presented as to leave an emphasis which is undesirable and to establish associations which are unwholesome in the minds of those who witness them.

III

So much for the positive values usually claimed for the motion picture. Let us now consider some of the positive evils which may be charged up against it. And the first thing to be said in this connection is that whatever evils are produced by the motion picture in the life of the child would seem to be conditioned by certain types of reactions which, while they are not peculiar to the immature mind, at least show themselves in greatly exaggerated forms in the minds of the immature. For convenience, we may classify these types of reaction, in relation to which the evils of the motion picture must be sought, under two heads, namely, imitation[1] and suggestion. By imitation, as used in this connection, is meant the tendency of the individual to experience sympathetically the emotional states and instinctive behavior of other indivduals whose conduct he has occasion to perceive and pay attention to. And by suggestion is meant a form of communication in which an individual tends to accept ideas

[1] "Imitation" as used here covers what McDougall includes under the correlative terms, "primitive sympathy" and "imitation," rather than what Ross and others mean by it, that is, simply the motor phase of suggestion.

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or other mental content as being true or valid in the absence of logical evidence felt to be convincing.

The effect of the child's imitative reactions to what he sees presented on the motion-picture screen is to render him unduly precocious in relation to matters, a knowledge of which could well be dispensed with until he has attained to greater maturity. Precocity in matters of sex is a case in point. One of the most characteristic traits of the average young person of today is the insight he or she has into the meaning and manifestations of sexual love. There are various ways in which this sophistication is made known to us from time to time. But however it may be manifested, it never fails to make us wonder what manner of people we are coming to be or to what unfortunate end our children are tending. And yet it is not surprising that this situation prevails.

The sex tendencies of the child ordinarily ripen during the later years of the adolescent period, whereupon, being normally stimulated, they issue into attitudes and behavior which are indispensable to a fully socialized individual. And by "being normally stimulated" is meant being stimulated through a contact with members of the opposite sex which is incidental to and controlled by the whole context of one's life at that particular time. But this is not the only kind of stimulation to which the sex tendencies will respond. For the sex instinct, like other instincts, is capable of being excited not only by the presentation of the stimulus which is appropriate to it (in this case, contact with a member of the opposite sex), but also by the perception of behavior which is the expression of this instinct and its emotion on the part of other people. This tendency on the part of the individual to experience the emotional states and instinctive behavior of other individuals who come under his observation, is what is meant by an imitative reaction. And it is this sort of imitative reaction to the suggestive love scenes portrayed on the screen that accounts for the precocity of our young people in matters of sex.

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It is impossible to overestimate the far-reaching impressions that are thus made on the juvenile mind and morals. It is not only that the child's attention is directed to matters which can be of no natural or wholesome interest to him at his age; the scenes and incidents to which he attends presuppose the interests and attitudes of the sophisticated adult and make their appeal accordingly. The result is that the child's latent sex tendencies are awakened at a time and in a manner that are as far removed from the conditions which should mediate the ripening and unfolding of these tendencies as could well be imagined. The most immediate effect of this premature sex awakening, as has already been suggested, is to make the youth abnormally precocious and worldly wise. And this precocity and this worldly wisdom, in turn, have the effect of destroying the youth's modesty, and of thus breaking down the most effective barrier to unsocial and immoral behavior. Evidence of the demoralizing and degrading effects of the sex-inspired picture on the youth of the land is to be seen on every hand. Immodest clothes, indecent dancing, promiscuous drinking parties, midnight joy rides—these things are not superficial and isolated evils to be railed at and combated one by one. They are rather an expression of the spirit of the times, a spirit of immodesty and irreverence and lawlessness generated in part, at least, by the unparalleled assault which, for a decade or more, has been made, through the motion picture, on society's most valuable assets, namely, its innocency and its youth.

Let us now consider the effects of the second type of reactions referred to above on the juvenile mind and morals. We classified this second type of reactions under the head of "suggestion"; and we defined suggestion as a form of communication in which the individual tends to accept ideas or other mental content as being true or valid in the absence of logical evidence felt to be convincing. We pointed out that the tendency to react to whatever ideas are presented in this

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uncritical manner is characteristic of the immature mind. We must now indicate some of the undesirable results to which this tendency leads in the case of a child who is a constant attendant at motion-picture shows.

The ideas which are suggested to the child's mind at the motion-picture show and which are accepted by him at their face value and reacted to accordingly fall into several more or less distinct groups. In the first place, there are the false notions which the child gets about life, and more particularly, about social realities. The reference here is not to notions which are inherently pernicious, nor to such as represent a legitimate idealization of life. Pernicious notions will be considered in another connection; and notions which merely idealize the realities of life in accordance with legitimate standards of value are a blessing to the child rather than otherwise. By false notions of life is meant conceptions which run counter to the logic of human nature and human history; conceptions which not only have never been actualized in the experience of men but which, in the very nature of things, could never be actualized. It is, of course, difficult in some cases to draw a hard and fast line between those two kinds of conceptions; doubtless the one tends to shade off into the other. And yet the fact remains that there are a large number of conceptions suggested to the child's mind by the motion picture which are false and impossible and whose acceptance make his adjustment to the realities of life a more difficult matter than it would otherwise be.

Another group of ideas which the child at the movies is apt to accept more or less uncritically is of such a nature as to represent false standards of value. The things which almost invariably stand out in picture plays as being most worth while are money, luxury, leisure, clothes, beauty, pleasure, and popularity. The types of character which are featured most prominently reflect standards of value no less questionable. The terrifying gunman, the unscrupulous gambler, the resourceful crook,

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the fascinating villain, and the irresistible vamp, all appeal to the juvenile mind with varying degrees of attraction and plausibility. It is frequently contended that whatever influence these standards of value and ideals of character might seem to exert on the imaginations of the young is more than offset by the rewards and penalties which are invariably shown to result from good and evil as the case might be. But the writer's observation has been that there are many pictures in which this element of poetic justice is either entirely lacking or, if present at all, is the most inconspicuous feature of the story, representing, no doubt, the reluctant concession of the producer to the moral sense of his audience. Furthermore, poetic justice, even in its most obvious forms, presupposes the logic of the adult mind; that is, the logic of cause and effect. But in the immature mind there is little interest in, and less appreciation of, considerations of cause and effect. The dramatic, the spectacular, the heroic, is what grips the child; and it is from these features of the picture play that the child gets his vivid and lasting impressions; the moral of the story is, so far as he is concerned, an irrelevant factor.

But there is one other group of ideas suggested to the juvenile mind by the motion picture which is inimical to good morals, namely, that of ideas concerning the ways and means of accomplishing antisocial ends. The manipulations of the motion-picture crook, as shown on the screen, are made to seem very simple and plausible even to the adult. What must be the impression, then, which they produce on the mind of the child, who, because of his limited experience and immature judgment, is unable to allow for their make-believe character? Of course, the child does not actually learn how to pick a lock, blow open a safe, "sand bag" a policeman, "white slave" a girl, or procure a drug from the impressions thus received. But it is possible for him to become dangerously familiar with the technique of these things, to say the least. It is not as if the child merely read about these methods of the underworld;

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in that case his lack of relevant experience would render the facts presented to his mind more or less meaningless. These facts, when presented on the screen, in a large measure furnish their own context and supply their own meaning. The result is that the imagination of the child is supplied with information which gives form and direction to whatever inclinations he may have to wrongdoing. And if, as most frequently happens, he is for the time being not possessed of any such inclinations, the information received is stored away in his mind to become an ally to the evil tendencies which circumstance may implant within him in the future.

IV

These considerations regarding the mental and moral effects of the motion picture on children and young people naturally lead up to the question as to whether a censorship of motion-picture films is desirable and practicable, and if so, what kind. Any adequate discussion of this question, however, is impossible within the limits of this paper. It must be sufficient to note that however necessary an external censorship may appear to be, and however effective this method of control may prove in actual operation, the highest type of productions of which the motion-picture industry is capable will not materialize until those who are the leaders in this industry are themselves able and willing to exercise the censor's functions. This sort of internal, autonomous censorship has for a long time been operative among the members of the press, and the results achieved have, on the whole, been highly satisfactory. Before these results can be duplicated in the case of motion pictures, however, picture producers and exhibitors must develop a group spirit or a morale comparable to that which characterizes the press. To this end, time must elapse, standards must become fixed, traditions must grow up and organization must be perfected. Evidence is not lacking that the trend in the motion-picture world is in this direction. The resignation by Mr. Hays of his position as

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postmaster-general to become identified with a syndicate of leading film producers is generally interpreted as an effort on the part of these producers to bring about greater cohesion among themselves and thus lay the foundation for developing a group consciousness among motion-picture people generally, without which their self-respect and morale as a group will be impossible. If this interpretation is correct, it is one of the most hopeful signs of the times.

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BOOK REVIEWS

THE DECAY OF CAPITALIST CIVILIZATION. By Sidney and Beatrice Webb. London: The Fabian Society and George Allen & Unwin, Ltd., 1922. Pp. Price, 4*s*. 6*d*. net.

The latest work of Mr. and Mrs. Webb is not so much the coping stone to their previous labors, but a stone flung at an older structure, a polemic against the capitalist basis of society. Hitherto they had believed in a gradual and inevitable transformation in Great Britain from capitalism to collectivism, accepted by the governing class; they now, however, foresee a reactionary period of organized resistance on the part of the employers to the "oceanic moral tide" of industrial democracy and a possibility of Bolshevism. Hence this indictment of the system, its principles, and results. They believe that capitalism has had its day, and condemn its "exclusive reliance on the motive of pecuniary gain to individual owners as inimical to national morality and international peace." They point out defects in the system, such as occasional inefficiency of management (as was proved by the investigations of the Coal Commission), and reckless wastage of natural resources, such as coal and oil—a fault which is now recognized and greatly restricted. Such counts do not necessarily imply that the capitalist system should be abolished, but amended. The prominence of trusts, it is true, has brought in a novel and a disturbing element, and free competition, the be-all and the end-all of the old economists, is no longer in working.

> The world no longer believes that if every person without exception, capitalist or wage-earner, rigidly pursues his own pecuniary gain—and even pursues it with knowledge and wisdom—this will necessarily coincide with the greatest aggregate pecuniary advantage of the nation as a whole . . . . the individual may make a profit by all sorts of manipulation without rendering service, whole classes may live by mere tribute. . . . . There is no such invisible hand, as Adam Smith romantically suggested, always guiding the directorship of the capitalist.

These counts are not new weapons, for there is already in existence a large literature treating of the weakness of the capitalist system. What is novel in this book is the division of the capitalist era into an earlier and successful, and a later and disastrous, period. They consider

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that there was a moment "roughly placeable at the middle of the nineteenth century," when the capitalist system could claim that in a century it had secured a surprising advance in material environment for immensely increased populations. In the second half of the period the authors see nothing but failure, though the greatest amelioration in material conditions, the restriction of the undue power of the modern capitalist, the large increase of working-class leisure and amusements, and the progressive diminution of crime, drunkenness, and disease dates from this condemned period. The authors mention the "victories" of the working classes, such as factory laws, mines, and railway legislation, minimum wage laws and the like, which, again, belong in the main to the later period.

M. JOURDAIN

A HISTORY OF MAGIC AND EXPERIMENTAL SCIENCE DURING THE FIRST THIRTEEN CENTURIES OF OUR ERA. By Lynn Thorndike, Ph.D. New York: The Macmillan Company. 2 vols. Pp. xl+835 and vi+1036.

It is a matter of congratulation that within recent years two American scholars have devoted themselves to the history of the intellectual culture of the Middle Ages. But the parallel goes no farther. For Mr. Henry Osborn Taylor's *Mediaeval Mind* is a history of medieval humanism, while Mr. Thorndike's is a history of the development of scientific thought in the Middle Ages. Beginning with Pliny, Seneca, and Plutarch, Mr. Thorndike has patiently examined the writings of every eminent (and even obscure) writer upon the subject to the end of the thirteenth century. As a work of labored erudition these two voluminous tomes are impressive. All available printed material has been supplemented by prolonged study of unpublished manuscripts, an imposing list of which is appended to each volume.

It is a great pity, though, that the author's powers of co-ordination and synthesis are so much inferior to his critical, analytic abilities. He has been unable to digest the enormous masses of information which he has accumulated, so that the reader, unless well versed in medieval history, is liable to be confused and perplexed. The method of the book is aggravating, for it follows a rigid chronological order—man after man, work after work, century after century—a practice which leads to tedious repetition and obscures the really valuable information which has been gathered together.

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But let no one be discouraged by outward appearances. These two volumes will amply repay careful study even if they seem encyclopedic, for they are far from being dry as dust. It is fascinating to examine the increasing power of differentiation, the increasing precision of the medieval mind as the centuries unfold. The quality of the medieval mind was no whit inferior to the mind of modern man. What the scholar then lacked was technique, the larger store of knowledge, and the easy means of communication of ideas we possess. When one finds Adelhard of Bath in the twelfth century demonstrating the indestructibility of matter by rational process though he could not prove it by laboratory experiment, and spending a whole summer studying the flux and reflux of the tides on the west coast of England; when we see Michael Scotus consuming the winter months in Paris studying the precession of the equinoxes and arriving at a modern conclusion; when we discover Conrad of Meginburg experimenting with natural electricity much as Franklin did five hundred years afterward—when, I say, we read of such things, no one of intellectual honesty may rightfully despise the man of science in the Middle Ages. The true spirit of the medieval mind is expressed by William of Conches in words which would grace the walls of any modern laboratory: "Rejoicing not in the many but in the probity of the few, we toil for truth alone." This was written in the twelfth century.

The student interested in the history of education will find it profitable today to examine Hugh of St. Victor's pedagogical treatise entitled the *Didascalicon*. I read it some years ago and can heartily indorse Mr. Thorndike's appreciation of it:

> It is especially devoted, as its first chapter clearly states, to instructing the student what to read and how to read. . . . . It is a clear, systematic, and sensible treatise which shows that mediaeval men were wider readers than has often been supposed and that they had some sound ideas on how to study.

Stripped of its medieval verbiage and its medieval examples, this little treatise has an astonishingly modern ring about it.

Professor Harold Höffding in his *History of Modern Philosophy* has an interesting paragraph upon the use of the word "modern." But it is surprising to discover how far back this terminology goes. Adelhard of Bath uses the word four times of the thinkers of the Middle Ages; William of Conches employs it three times. There is food for reflection in such usage, for it shows the continuity of intellectual development, and that these cloistered scholars of the Middle Ages were one with us in spite of all differences between that period and our own. Were William of Conches living now in the United States, there is reason to believe

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that Mr. Bryan would break a lance with him. For even so early the difficulty of reconciling science and the Bible was apparent. His indignation is high against those who resent explanation of the natural facts in the Bible, and prefer to accept them blindly on faith, which too often is mere credulity. "A reason should be sought in every case if one can be found," he contends. He has scorn for those who say: "We do not know how this is, but we know that God can do it." "You poor fools," he retorts, "God can make a cow out of a tree, but has He ever done so? Therefore show some reason why a thing is so, or cease to hold that it is so."

The scholar interested in the history of ideas and their influence upon civilization will find much to attract him in these pages—shrewd "guesses at truth," keen observations, and interpretations which show that the medieval man could and did use his mind independently, and that the weight of tradition and the tyranny of authority were not always uniform and constant in their application. For example, Hugo of St Victor had an idea of the progressive evolution of humanity which (minus the religious element in it) is not unlike that of an eighteenth-century philosopher. Each believed in the perfectibility of the race. The difference is that the former believed that the process was one of growing in grace, while the latter found the redemptive process in reason.

Interesting, too, is the evidence that the medieval man was not unaware of the changing social conditions in which he lived, and sought to understand and to interpret them. With the development of commerce and trade, guild organizations, etc., one finds the suggestion (let the sociologist take notice) that the "practical" arts might be as logically differentiated as the liberal arts. The classification even distinguishes a *trivium* and a *quadrivium* of the mechanical arts, the former comprising cultivation of the soil, food production, and medicine (explicable by the fact that medieval medicine was based on the use of herbs), and the latter including textile-making, metal-working, architecture (the architect and the builder as yet being unseparated), and business courses (*mercatura*). Let the deans of our colleges of commerce and administration take notice of this information!

A few errors are to be corrected. The "Babylon" of the Middle Ages was Cairo, and not Baghdad as Mr. Thorndike (I,744) thinks. The evidence is conclusive on this point; e.g., Benjamin of Tudela, chapter 21; Honorius of Autun; Guibert de Nogent; Albert of Aix; etc. See *Hist. Occid.* Cr. IV, 473, 514, 544, 703. The tale (in II, 863) about Raymond Lull's death is legend. He died in the island of Majorca. See Delisle,

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Journal des Savants. (1896) p. 353; Morel Fatio, *Romania*, XXV, 326. In II, 219, bad type-setting and careless proofreading makes it appear that professor F. J. Furnival lived "about 1460–76."

JAMES WESTFALL THOMPSON

THE CONTACT BETWEEN MINDS: A METAPHYSICAL HYPOTHESIS. By C. Delisle Burns. London: Macmillan & Co., Ltd., 1923. Pp. x+138. Price, 7*s*. 6*d*., net.

The problem studied by Mr. Burns in this able and closely argued essay is one of perennial interest: namely, how and in what way we become aware of one another's minds. The view that A infers the existence of a mind in B, from analogy between B's gestures and "expressions," and his own never ought to have imposed itself upon thinking people, and is, perhaps, more completely demolished by Mr. Burns than by any previous writer; he gives good reason, in fact, for suspecting that we discover minds in our own bodies because we have already found them in the bodies of others. To state his conclusion thus would be, however, to express much too crudely the result of an argument which he develops with admirable caution and subtlety; for the language used suggests the traditional distinction between body as *res extensa* and mind as *res cogitans*. Now for Mr. Burns the rejection of the Cartesian dichotomy is fundamental; and he sides with the thinkers who would restore the ancient unity of mental and bodily activities. If this position be taken, it follows that bodily contacts (or at least some of them) must also be mental contacts, and our problem is reduced to the task of analyzing the special character of mental contacts and, in particular, of determining how they lead to the concepts of minds housed in separate bodies.

In working out this task Mr. Burns accepts from Lloyd Morgan the distinction between the *-ing* and the *-ed* (that is, the distinction between mental process and the object upon which it is directed), and also Alexander's terms "enjoyment" and "contemplation." With Alexander, however, "enjoyment" is used often, if not always, in such a way that the enjoyment (for instance) of an act of seeing *is* the act of seeing as distinguished from the object "contemplated" in the act; while Mr. Burns is careful to restrict its application to the awareness of a mental act which we may have at the time of its occurrence. It is vital to note that this awareness is never the same thing as the contemplation of an object; A may be said to *contemplate* B's body, but only to *enjoy* B's mind.

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In Mr. Burns's view, as the example just given indicates, the term "enjoyment" does not carry the individualistic implications of introspection. When A and B co-operate in a common business, they may have an enjoyment which is neither A's nor B's, but belongs to them both; nevertheless the mental processes involved are (presumably because they are activities of two bodies) themselves distinct. Thus the possession of common enjoyments *may* precede and lead the way to the belief in distinct minds, our own and those of others; and, in view of what anthropologists tell us about the derivation of individual from social consciousness, it is probable that this is the way in which the discovery of other minds and of our own actually comes about. The concept of joint enjoyment is the crucial element in Mr. Burns's argument, and he is clearly aware of the difficulty as well as the importance of making it acceptable. In defense of its validity he repeats and develops Alexander's contention that truth, beauty, and goodness are revealed only to a multiplicity of minds in co-operation; for in the perception of these "tertiary qualities" minds are specially united. The argument has, however, its dangers; for it might easily be pressed to the conclusion that the "social mind" is alone real and that individual minds cannot truly be said to exist. Mr. Burns seeks, therefore, to avoid this unwelcome corollary. The attempt is one of the most original things in the book, but the line it follows must be only briefly indicated. The problem is so to conceive the individual and the social mind that neither becomes merely an attribute of the other, and the solution is reached by means of the scholastic notion of "subsistent relations"; that is, of relations which share some of the properties of "substances." An individual mind is the subsistent relation which connects the mental experiences that are activities of a single body, a society is the subsistent relation which connects its member-minds. The subsistent relations being different, individual minds and society are alike real, though they are realities of different character. Ingenious and subtle as Mr. Burns's argument is, it does not at all points compel conviction; in particular he has, perhaps, hardly made the connection between the doctrine of joint enjoyment and his use of subsistent relations sufficiently clear. To say this is simply to admit that he has not reached a final solution of one of the most difficult problems in philosophy. There is no doubt, however, that his essay is at least a valuable contribution toward a solution, full of pertinent criticisms and illuminated by the scholastic learning of which he has so enviable a store.

T. P. NUNN

LONDON, ENGLAND

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PSYCHOLOGY AND MORALS: AN ANALYSIS OF CHARACTER. By J. A. Hadfield, lecturer in psychology, King's College. London: Methuen & Co., 1923. Pp. 186+Index. Price, 6s. net.

This is a small book, but it is of the first importance for students of morality and moral ideals. It provides a summary of the generally accepted analysis of psychological facts which underlie any form of the moral life, and therefore should be useful as an introduction to ethics. But the attitude of the author who is trained in medicine and is a lecturer on psychology is significant. The "moralist," he says, is not sought out by those who feel that they are suffering from "moral diseases" because the moralist will "blame them" or tell them to exert their wills. This attitude toward teachers of morality is undoubtedly common, and it is justified. The theory of morality, or ethics, has suffered in consequence. And perhaps the cause is what may be called the "curse of preaching" or "exhortation." Those who have inherited the Protestant tradition do not understand what the system of moral teaching was which the Middle Ages developed in the confessional. The "confessor" was trained in a form of moral science, inadequate, indeed, but on the right lines, to avoid above all things the imputation of blame. He was to recognize symptoms and to tell the patient how to deal with his disease when diagnosed. The modern doctor-psychologist is to the medieval confessor as the chemist is to the alchemist; the moralist who is completely "out of it" is the preacher.

Dr. Hadfield is well aware of the difficulties which arise when the psychology of the moral life is stated from the point of view of the pathologist. An uncomfortable feeling may arise in the reader or the student that whatever anyone says or does is really a disguise for what he really is "after." Thus "books on sex are usually written by those whose sex life is abnormal." That may be true enough as an instance of a repressed complex; but why suppose that the explanation is similar if a millionaire gives money to a university? A valuable distinction is made by Dr. Hadfield between "sin" and moral "disease." Sin is due to wrong "sentiments," disease to morbid "complexes," and sentiments are constellations of instincts, emotions, etc., consciously present and acceptable to the individual. Complexes, on the other hand, operate without consciousness. The cause of the action done in moral disease is not recognized by the doer. A similar distinction is made between a "phantasy" and a moral ideal: for in the former case a person is not aware of the difference between himself as he is and himself as he would like to be. In explaining the moral ideal Dr. Hadfield uses the idea of "com-

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pletion" in a most Aristotelian manner; and indeed some of his sentences about the tendency of nature might be quotations from the text of Aristotle. But the analysis becomes a little less exact when the more distinctively ethical conceptions are approached. Thus we are told:

> What the true ideal is has never been determined . . . . to the artist it is to be found in the beautiful, to the gourmand his stomach . . . . whatever the ideal is conceived to be, it is chosen as that which will secure ultimate happiness. Yet only if it will really achieve that end can we admit that it is the true ideal.

There are vast assumptions in these sentences and in the discussion which follows whether there is an "objective" ideal. Indeed, it seems that Dr. Hadfield has not sufficiently considered the distinction between matters of fact and "values": but he may perhaps plead that that is outside his purview and that his assumptions are sufficiently correct as a basis for psychological analysis. The analysis of the psychological fact of happiness is very well done. It is alarming to hear that "moral laws are the enunciation of the higher laws of biology" (p. 141), because, in almost any sense of the words, that proposition is absolutely false. Of course, one does not know what "higher" laws may be, but ordinary biology is a statement of what occurs and in no conceivable sense a statement of what ought to occur. However, the psychological scientist must not be underestimated because of his statements in regard to another science. Dr. Hadfield's book is an event in the history of the psychology of the moral life, for it includes the latest results of investigation without any of the "cranks" which now so much disfigure psychology.

C. D. BURNS

INTERPRETATIONS OF LEGAL HISTORY. By Roscoe Pound. Cambridge: The University Press, 1923. Pp. x+171. Price, 12*s*. 6*d*. net.

Professor Pound's study of certain aspects of legal history is remarkable for its broad historical and philosophical range, its easy mastery and co-ordination of separate but related lines of legal growth and theory, and the skill and vigor of its destructive criticism. Like a gladiator he seems to hear on all sides the cry of *vae victis*, as he prepares to finish the prostrate historical school of law of the nineteenth century.

The world-wide movement of thought naturally influences law; and the speculations of a Kant and a Hegel affect and even determine the nature of legislation, judicial decisions, and legal theories where the names of these philosophers are unknown. The main thread running through the history of the science of law in the nineteenth century is the rise, the

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dominance, and the downfall of the great historical school founded by Savigny. The historical school was a reaction against the creative juristic thought of the age of philosophy; for the nineteenth-century ideas of history and the interpretation of history set up a ferment in the domain of law and legal literature. Immediately, it was a reaction from the confident paper-constitution making and doctrinaire disregard of traditional political institutions and conditions of time and place which marked the French revolutionary era, and from the belief in the miracle-working powers of reason in legislation, when it was believed that "the jurist, by a mere effort of reason, might frame a perfect code which could be administered by judges mechanically as ultimate legal wisdom." The eighteenth century was scornful of history and of traditional legal methods; the new school held that "law was found not made," that is to say, it was a theory of the *traditional* element in modern law; the new school was learned, and staffed by academic jurists, Savigny and Maine in Europe, Ames and Thayer in America. After a century's existence and half a century's undisputed hegemony the historical school declined at the close of the century, and broke down as completely as the "law of nature" school which it had superseded. In 1902 Saveilles, a French exponent of the historical school, accused it of abdicating and drifting to legal immobility. It is, however, unlikely that the historical theory in the hands of men like Maitland had become rigid enough to "deny growth and progress in any effective sense through its belief that it had discovered finally the immutable lines of growth or had calculated once for all the fixed orbit of progress outside of which no movement could possibly take place, "since Maitland himself taught that the historical spirit is not hostile to reform, and that history is studied in order that progress may be made. The break-up of the historical school coincided with the general "abandonment of the 19th century historico-philosophical thinking in every field, and the revival of faith in the efficacy of human effort with an accompanying call for philosophies of action and of creation" in the place of the political fatalism and juristic pessimism of the immediate past. *Enfin Bergson vint*, whose intuitionism shows us how we act better than we know, and achieve results by trial and error to meet human desires, and to build human institutions. All the recent philosophies of every type are philosophies of action. Croce, with whom Professor Pound discussed the subject of his book, in his identification of philosophy and history, again repels the nineteenth-century philosophy of history. When such influences are in the air "a functional attitude towards jurisprudence is inevitable." Professor Pound's book, therefore, is in the nature of a summary and appraisement

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of the nineteenth-century contribution to juristic thought, now that that epoch has come to an end. If we are to listen to his lesson that law is made and remade by men, and that there is great creative work ready for jurists in Anglo-American law,

> The legal achievements of the 19th century must be organised and restated presently to serve as the basis for another judicial and juristic new start. The law must be liberalized once more and must receive new and large infusions from without, after a century of pruning away archaisms and of organising and systematizing rather than creative juristic activity. These demands of the immediate future will call for men and for a faith in the power of men to do great things which was wanting in the legal science of the last century.

Professor Hazeltine in his Preface compares the pleasure to be found in Dr. Pound's book to James Russell Lowell's delight in "coming across a poem that one can honestly like, it's like finding a new flower"; in *Interpretations of Legal History*, also, the jurist, historian, and philosopher will find "a new flower."

J.

SHORTER NOTICES

EMERGENT EVOLUTION. By C. Lloyd Morgan, F.R.S. (The Gifford Lectures at the University of St. Andrews, 1922.) London: Williams and Norgate, New York: Henry Holt and Company, 1923, pp. 313 (Appendix and Index). Price, 15*s*. net.

The central idea of this book is that reality shows a connected series of facts and events such that some arise out of others; and does ***not*** show anything radically alien to anything else, such as life and mind are sometimes supposed to be by contrast with space or matter. But the homogeneity of the real in its relatedness is no more obviously a fact than the newness or uniqueness of each character of the real as it arises. Hence there is indeed evolution "out of" facts or events, but what comes out is not in any sense what was there before, and therefore it is "emergent." The general "nisus" or movement of reality shows a "directive Activity" which is called "God" by Professor Lloyd Morgan. This is said to be an acknowledgment of fact, demanded by any effort at a constructive philosophy. What Professor Alexander in his *Space, Time and Deity* called the "emergent quality of deity" is accepted; but Professor Lloyd Morgan goes much further by accepting an unconditioned Complete Reality as the necessary supplement of any naturalistic account of emergent evolution. Finally, although the logical ground is not given, this Unconditioned is spoken of as "Him," and it is said that "we are in a measure one with Him in Substance."

Current philosophical controversies are dealt with very cogently in the course of the argument, particularly the problem of "nature" as viewed by the Realists. Professor Lloyd Morgan accepts what the Realists call the object and its qualities so far as to admit that there is an "effluent from nature," of which it may be said that the existence of thought or perceiving "makes no difference to it," but he does not accept the realist tendency to suppose that thought or perceiving "makes no difference" at all. He, therefore, conceives

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color, for example, as a "proficient sign," and thus there is a kind of reality of which thought or perceiving is creative. That is to say, if there were no perceiving, there would be no color, but there would still be that which, when there is perceiving, is the advenient influence which is not mental. It will be clear from the foregoing that Professor Lloyd Morgan's book is both interesting and important. It provides some valuable new criticisms and suggestions with regard to the central problem of philosophy today. Problems of value are only touched upon in a short discussion of beauty, the conception of which would probably hold in regard to goodness also: and if the goodness of an act is a "projective sign," clearly there must be some further discussion of the relational character of the moral standard.

C. D. B.

THE WORKER AND THE STATE. By Frank Tillyard, M.A., M.Com., Professor of Commercial Law at the University of Birmingham. London: George Routledge & Sons, Ltd. New York: S. P. Dutton & Co., 1923. Pp. viii+298. Price, 10*s.* 6*d.*, net.

This is a clear and methodically arranged account of the attitude of the state to the relationship of employer and employed in recent times in regard to wages, hours, safety, and health. The subject is dealt with throughout from the purely legal point of view, but there is given also in all cases a succinct historical survey which will be of value to the reader. The author does not enter into problems of social philosophy as such. Perhaps he sympathizes with the view he quotes from Stanley Jevons that legislation is not a science based on principles. Certainly his account shows that the policy of the state has been determined by tardy and cautious experiment. The book will be found useful by students of social philosophy who desire to have an accurate account of the existing law in a readable form.

MORRIS GINSBERG

LONDON

SOCIETY AND ITS PROBLEMS. By G. S. Dow, Professor of Sociology in the University of Denver. London: Harrap & Co., Ltd., 1923. Pp. xiv+594. Price, 10*s.* 6*d.*, net.

This is the second edition of a textbook (first published in 1920, with some additions) directed toward the needs of university students in the United States. It contains a very good summary of the generally accepted view of sociology as the science of matters of fact in social life. The ideals or standards operating in society are assumed to be matters of fact, but the study of these ideals is relegated to ethics. This is perhaps necessary, as the field of investigation is wide enough even if we include the problem of moral standards in our "science" of social life; but there may be a danger that the student may imagine the study of what men *ought* to do is less important than the study of their actual practices. That is the trouble with sociology. Can it be an inclusive science of society? Society, surely, is something more than "matter of fact," and the sociologist usually introduces conceptions such as progress, crime, etc., with which indeed Professor Dow is much concerned at the end of his book. But are these mere assumptions? Is crime simply what is or is not done? Can we afford in any science of society to exclude ethics? Again, the book is very American in its practical application of social theory. Immigration and divorce figure largely; but the much more general problems are curiously treated. For example, property is given only two pages. This may be necessary for pedagogical reasons in America, but is it not likely to obscure the larger issues which are not specifically American?

C. D. B.

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TOWARDS INTERNATIONAL JUSTICE: BEING A COLLECTION OF ESSAYS AND PAPERS ON INTERNATIONAL ORGANISATION AND THE LEAGUE OF NATIONS. By F. N. Keen, with an Introduction by Professor Gilbert Murray. London: G. Allen & Unwin, Ltd., 1923. Pp. 249. Price, 7*s*. 6*d*. net.

Mr. Keen, one of the most active members of a group which developed the idea of the League of Nations during the war, possesses the knowledge and authority for a discussion of the principles underlying the League. Each essay bears its date upon its face, the first and second chapters dating from the time when the League was in the domain of theory. "The reformers all began," as Professor Gilbert Murray writes, "by thinking out the sort of organisation they really wanted, and ended, as was inevitable, by accepting such organisation as they could get." The criticisms of Mr. Keen upon the covenant are valid; among the provisions of the covenant that have given cause for searchings of heart is Article 10, whereby the members of the League undertake to respect and preserve, as against external aggression, the territorial integrity and existing political independence of all the members. This amounts to guaranteeing the *status quo* which may be unjust or unreasonable, hence the article has now been found vague, dangerous, and perhaps superfluous.

The Council of the League, in the minds of many of its supporters, was to have legislative powers, overriding where necessary the various national parliaments, and the *cadres* of an international force were to be formed out of contingents supplied by the separate nations. This has not come to pass, and Professor Gilbert Murray considers it among the few pieces of good luck which the League has enjoyed that there has so far been no international force. It would have been recruited from the nations which now maintain large armies, it would have had a French Commander-in-Chief, and heaven knows where it would have been, or what it would have been doing by this time." As it is, the League is conspicuously deficient in effective coercive force; there is a large assembly and a small council to make recommendations and decisions, but no nation need pay much attention to either unless it happens to approve of them. There is a Court of International Justice to which the nations may go if they like, and which they promise to obey if they do go to it. There is the secretariat (whose importance is emphasized by Mr. Keen) as the principal channel through which the League will communicate with and derive information from its members and the outer world, which will develop doubtless into a great organization on civil service lines. In fact so flexible and modest is the League in being, and not as contemplated by theorists, that it is far removed from the superstate. The book should be read in connection with the study by Mr. Roth Williams who considers the really considerable work carried out by the League during its brief existence.

J.

THE PRINCIPLE OF OFFICIAL INDEPENDENCE WITH PARTICULAR REFERENCE TO THE POLITICAL HISTORY OF CANADA. By R. M. Dawson. Introduction by Professor Graham Wallas. London: King and Son, 1922. Pp. 268+Index. Price 10*s*. 6*d*. net.

This is an excellent study of Canadian political experiences with regard to administrative or executive officers; and it includes valuable indications of general principles in this matter. The history of Canadian experience shows the influence on the one hand of the American "spoils system" and on the other of the British system of competitive examination and security of tenure.

Queen Victoria's social standards (quoted on p. 189) still influence the attitude of the government in London toward the choice of governors for the

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Dominions; but there is no doubt that in Canada the governor-general is compelled to act under the "advice" of Canadian ministers. The problem of the governor, is, however, peculiar to empires. In all states the problem of the civil servant and the special commissioner is important, and with these Dr. Dawson is chiefly concerned. Graft and misapplication of public funds are the moral evils which have to be avoided in government, and the moral standards of public servants have to be established and maintained. In the sphere of government, indeed, we may work out a morality which will redeem industrial practices. For this reason all students of ethics should be attentive to the principle of official independence. Is the public servant to depend for his tenure of office upon the approval of the mass of the citizens? And if he is not, how is he to be prevented from becoming an independent tyrant? Again, how are we to choose our officials and how dismiss them? The Canadian experience is a guide to certain general principles, but the larger issue, affecting all nations, is the problem of the moral standard in the community as a whole. Is a man in his position to get or to give? That question is never fairly faced by the newspapers or the man in the street. It is clear, meanwhile, that "professional honor" is becoming a very strong support of morality and is perhaps at present a better security for good government than what is sometimes called democratic control. Dr. Dawson does not discuss the fundamental moral issues, but the evidence he offers is all the more valuable because he does not maintain any special moral theory.

C. D. B.

CONFLICT AND DREAM. By W. H. Rivers. London: Kegan Paul, Trench, Trubner & Co. New York: Harcourt, Brace and Company, 1923. Pp. ix+195. Price, 12*s.* 6*d.* net.

Man's curiosity and wonder have always been excited by dreams, but their systematic—we can hardly yet call it scientific—study has only been in existence during the last twenty years, when Freud revolutionized the attitude of psychology toward this rich and neglected field. The aim of the late Dr. Rivers, an exceptionally able and well-balanced psychologist, who in his later years was giving increasing attention to this subject, was to rescue the psychology of dreams from its extravagances; and while accepting Freud's principle that dreams have a serious significance, he rejects his scheme of dream interpretation, of which the general method is "so unscientific that it might be used to prove anything." For if it be assumed that "every element of a dream may be interpreted by its opposite as well as by itself," what cannot be proved by such an elastic method? Dr. Rivers points out that the system of Freudian interpretations of symbols, and in especial of sexual motives and symbols, including absurdities such as that the hat and long articles such as an umbrella are universal phallic symbols, rests on singularly little evidence; and his publication and analysis of his own dreams and of dreams related by his patients certainly suggest that such so-called universal sexual symbols may bear, at least in some cases, a meaning of a different kind. Freud interpreted dreams as attempts to fulfil a wish, the wish being of a nature of which the conscious self would be ashamed, and which is, consequently, transformed by the "Censor" into symbolism, which the psychoanalysts have been busy interpreting. In contradistinction to the Freudian psychoanalytic school, Dr. Rivers insists upon the importance of recent and present "conflicts" in human experience, whereas the former give an exaggerated importance to infantile experience in the causation of the dream. The dream, according to Dr. Rivers, is "essentially a mode of regressive mental functioning," a regression to the

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ways of early life, while the experience embodied in the dream is derived from the dreamer's recent experiences; a view which is an essential advance in the right direction and a far-reaching modification.

E. F.

THE UNCONSCIOUS: AN INTRODUCTION TO FREUDIAN PSYCHOLOGY. By Israel Levine, M.A. London: Leonard Parsons, 1923. Pp. x+215. Price, 7*s.* 6*d.*, net.

This remarkably clear and well-balanced exposition of the psychology of the unconscious has deservedly won high commendation from Professor Freud, who is stated to have read the proofs of the book. It is quite different in character from the general run of works on the subject, and derives its interest not from any studies of abnormality or perversity but from the excellence of its architecture, the lucidity of its analysis, and the candor and good judgment displayed in its brief but penetrating criticisms. Even readers who have a considerable acquaintance with the literature of the new psychology would gain profit from the study of Mr. Levine's sober and quite extraordinarily lucid pages. In a brief review of the bearing of Freud's discoveries and doctrine upon the problems of ethics, the author shows that psychoanalysis throws much light upon the psychological basis of Hedonism but does not, when its results are fairly interpreted, destroy the principle of responsibility nor, in spite of its thorough-going postulate of determinism, exclude the ethical notion of free-will. Moreover he has no difficulty in showing that it offers valuable guidance in the spheres of practical ethics and moral education.

T. P. NUNN

LONDON, ENGLAND

THE EVOLUTION OF THE CONSCIOUS FACULTIES. By J. Varendonck, D.Litt., D.Sc. London: George Allen and Unwin; New York: The Macmillan Co., 1923. Pp. 259. Price in Great Britain, 12*s.* 6*d.* net.

This book contains the author's thesis in his book *Psychology of Day-dreams*, published in 1921. The author is not quite orthodox in his use of English, but he knows that in psychology definition of terms is today our first requirement. He refers to a "second self" and to "automatical revivification"; he says "Reduplicative memory may be regarded as being at the origin of the knowledge of casual relations," and one is uncertain what "at the origin" means. There is "inhibition of contractility," and the author refers to various writers for evidence upon which his thesis is to rest, but the language has to be learned in this as in other new psychological books before one can "place" the theory of the writer in its relation to what we already know of mental process. The trouble is that in many new books where the author's language has been translated into older terminology what is new in his thought appears to be less obvious than before. Dr. Varendonck says that memory repeats and synthesizes, and that mere awareness develops into control of surroundings. Independence of surroundings is said to be the mark of the stage in mental evolution reached by any individual. There is also what the author calls "exteriorisation of ideations," but beyond that it is difficult to say what he thinks is the character of what he calls "the ego" or "self-awareness"; and the obscurity of the English phrasing makes it difficult to explore his meaning.

C. D. B.

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THE NATURE OF INTELLIGENCE AND THE PRINCIPLES OF COGNITION. By C. Spearman, Grote professor, University of London. London: Macmillan & Co., 1923. Pp. viii, 358. Price 15*s.* net.

Professor Spearman has led the way in experimental psychology in the University of London, and he now offers in this book a statement of principles which are, as he claims, the "so long missing genuinely scientific foundation for psychology." The principles will, he hopes, unite the general systematic psychology of the textbooks with the experimental psychology at present to be found chiefly in periodicals, and it is indeed a scandal in psychology that all the experimental work which has been done has not caused any great change in the general statements of psychology. Chemistry, for example, has been greatly changed by the results of experiment. Professor Spearman, however, thinks that the experimentalists in psychology have been partly to blame; and he proposes to remedy their defects by a statement of fundamental principles upon which investigation may proceed.

In the description of psychological data given on page 47 we have "seven stages": the first being "material thing"; the second, "ether waves"; the sixth, "passage from matter to mind," which is symbolized, not unreasonably, by two question-marks; and the seventh is "sentience." Now this may or may not be valid, but it is a peculiar form of metaphysics to speak of a "material thing" and a "passage from matter to mind."

Experience is "something lived, undergone, and enjoyed" and this is the fundamental datum for psychology according to Professor Spearman. Either it actually is or it gives characteristics and qualities; and relations are "educed" at a second stage. Sentience is sometimes but not always accompanied by cognition or awareness that sentience is occurring. These propositions, however, do not seem to be treated as working assumptions, as atomic structure probably is in the most exact chemistry. They seem in Professor Spearman's book to be treated as necessary truths, although no exact science need logically involve any particular metaphysics. Probably the experimental psychologist needs an apparatus of agreed terms and methods in order to advance without always having to leave most of his forces to guard his "base"; but the problem of the apparatus of terms is a logical problem. Pure behaviorism, which is not Professor Spearman's theory, might equally well provide an apparatus for some sections of psychology, but in this book it is maintained that even the "self," "ego," or "I" is a necessary assumption. The psychological analysis of the relation between different kinds of "experience" is acute and is supported, as in a science it should be, by references to experiment, but the logical assumptions seem to be at least disputable, and the metaphysics seem to imply just that "bifurcation" of nature which Professor Whitehead has refuted.

C. D. B.

TRACTATUS LOGICO-PHILOSOPHICUS. By L. Wittgenstein. Introduction by Bertrand Russell. London: Kegan Paul; New York: Harcourt Brace & Co., 1922. Pp. 189. Price, 10*s.* 6*d.* net.

This book, which contains the German text as well as the English, is mainly concerned with the logic of symbolism. Thus, it is said he made "pictures of facts" which are propositions. And again, the proposition represents "the state of affairs" "only in so far as it is logically articulated": but something remains outside representation. "My fundamental thought is that the 'logical constants' do not represent; that the *logic* of the fact cannot be represented." The growth of knowledge, therefore, is the perfecting of a picture by the improvement of the language of common use.

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The sciences give their picture; but "philosophy is not one of the natural sciences." "The result of philosophy is not a number of propositions but to make propositions clear." The whole theory rests upon work already done by Russell, Frege, and Sheffer, but Mr. Wittgenstein differs from the mathematical realists in his conception of the way in which the philosopher deals with propositions.

The ethical philosopher will be specially interested in the relation of the ideal and the actual, which is dealt with from section 6.4. page 183: "Value must lie outside all happening"; hence, "there can be no ethical propositions, for propositions represent the logic of facts." "Ethics cannot be expressed" and it is "one with aesthetics." The change introduced by the moral will is not a change in the world but a change from one world to another; and finally, "whereof one cannot speak thereof one must be silent," which is the last sentence in the book. The conclusion (especially in regard to ethics), is frankly mystical, and the implications are not worked out. There is some sense in which value is a fact among facts; and there is a sense in which propositions can be made *about* ethical or moral values, but possibly the way in which these propositions "represent" is quite different from the representation of "the state of affairs" in science.

It will be seen that the book is important and suggestive. The Introduction, by Bertrand Russell, gives a general view of the theory and some criticism of it. The whole book is written in a succession of disconnected aphorisms which, although vivid, are sometimes too abrupt to be quite clear.

C. D. B.

LONDON, ENGLAND

THE POETIC MIND. By F. C. Prescott. New York: The Macmillan Co., 1922. Pp. xiv+308. Price $2.00.

SOME APPLICATIONS OF PSYCHO-ANALYSIS. By O. Pfister. London: G. Allen & Unwin, Ltd., 1923. Pp. 352. Price 16*s*. net.

Schiller in the essay on the *Limits of Taste* says that he considers it blameworthy, if works are selected for the education of youth, in which scientific matters are invested with an aesthetic form. Nowhere is the danger more clearly demonstrated than in the history of literary and aesthetic criticism where we find the works of criticism most esteemed, which aim most obviously at being works of creation. The prose forms of a Hazlitt, a Swinburne, and a Matthew Arnold add fresh works of pure literature to the language, but obscure the scientific works which should be the first object of a critical faculty. Hence the attraction of a Remy de Gourmont for the modern mind; for although his psychology can no longer be defended, his method was scientific. Today we badly need a statement of the present outlook of psychology on art, and these two books may be read with some interest from this point of view. The first, however, is diffuse and somewhat superficial, it does not need innumerable quotations from Wordsworth to prove that poets regard their work as akin to drama, and Freud cannot be thought to have discovered much, if (as here) his analysis merely seemed to tell us through scores of pages that the lunatic, the lover, and the poet are of imagination all compact. The author takes the words of poets at their face value and frames them in popular paraphrases of the most acceptable psychoanalytic generalizations. The second book devotes one section to the analysis of art as represented by the paintings of a young man called "Frank"; these paintings are not reproduced, but some of them (published in an earlier volume by the same writer) reveal the rock upon which Dr. Pfister

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splits; for they are not works of art at all but merely crude symbolic scribblings. Dr. Pfister throws light, for instance, on the problem why men draw or write sentences on white-washed walls, but he does not attempt to explain why we so seldom find aesthetic experience in contemplating them. Both books allude to the "cathartic" value of art to society, a point which is so important in practical ethics, and about which so little has been written.

J. LANGDON-DAVIES

THE FOUNDER OF QUAKERISM: A PSYCHOLOGICAL STUDY OF THE MYSTICISM OF GEORGE FOX. By Rachel Knight, Ph.D. London: The Swarthmore Press, Ltd., 1923. Pp. 280. Price, 12*s*. 6*d*. net.

This study of Fox is a piece of experimental work in the largely unexplored field of the psychology of religion, in which the author analyzes and classifies Fox's religious experiences under the assumption that Fox is a great mystic. Fox, the weaver's son, was a compelling personality, a real power for good, primitive and uncouth in many ways, and possessed of highly strung nerves. He touches on mystic experience, as when he sees "an ocean of darkness and death, and an infinite ocean of light and love which flowed over it," but the comparisons (with their accompanying diagrams) between Fox and Socrates and Fox and Plato ("both Fox and Plato used a symbolism," we are told) are otiose. The valuations of Fox by Emerson and Josiah Royce, of which Dr. Knight gives excerpts, go nearer to the heart of the matter than her apparatus of analysis. "Fox," writes Josiah Royce, "was not a typical mystic"; "an institution is the lengthened shadow of a man (says Emerson aptly) as Quakerism of George Fox." Fox is to her not a personality to be presented, but a subject for the new analysis which leads her astray into a youthful extravagance and pedantry, and her classroom experience has apparently induced a belief in the value of diagrammatic presentation. There are obvious instances (as Dr. Barrett Brown points out in his introductory note) in which Dr. Knight has given a needlessly elaborate psychological or even physiological interpretation of experiences by Fox which bear a simpler explanation. For instance, Fox writes on occasion that the Lord "led" or "drew" him, an expression that may well be from the common vocabulary of religious experience. But Dr. Knight will have it that Fox's "kinaesthetic imagery of motor strains was objectified until he actually felt them as real; he felt that it was actually the hand of the Lord that led and drew him on." It was in the capacity of teacher and leader that Dr. Knight did her best work rather than in the sphere of scholarship, and as a contribution to the pscyhology of religion there is much in this thesis that is immature and that her riper judgment would have dispensed with.

J. E.

DIALOGUES ON METAPHYSICS AND ON RELIGION. By N. Malebranche. Translated by Morris Ginsberg, with a Preface by Professor G. Dawes Hicks. Library of Philosophy. London: G. Allen and Unwin, 1923. Pp. 374. Price, 16*s*. net.

This book is a translation of Malebranche's *Entretiens sur la métaphysique*. The translation is preceded by about fifty pages of introduction by Mr. Ginsberg, which is not only an exposition but also a very illuminating criticism of the chief doctrines of Malebranche. Undoubtedly, as Mr. Ginsberg says, there is a fundamental contrast between Descartes and Malebranche, which historians of philosophy have not fully appreciated because of the superficial

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similarity of their systems. Descartes belongs to the traditional scholasticism of the late Middle Ages, which respectfully but firmly set theology aside when it dealt with philosophy. Malebranche is in romantic reaction against this attitude; philosophy was for him a sort of religion, for it gave one not mere conclusions but "that vision which is salvation." The *Dialogues* themselves are interesting, but whether they are significant philosophically may perhaps be doubted. However, in the history of philosophy it is necessary to recognize that a philosophical thinker of the first order as recently as 1688 can assert that "before the fall of man" man knew clearly the peculiar philosophy which that thinker was advocating! Dialogues were fashionable in those days and in the eighteenth century; that form of presenting philosophical doctrines leaves one nowadays with the uncomfortable feeling that the author makes his opponent in the dialogue a fool of quite exceptional foolishness. It is so easy to think of objections to the author's theory which are not stated in the dialogue. At the end of these translated dialogues we find ourselves committed to arguments in favor of the medieval doctrine of the Eucharist and of the infallibility of the bishops of the Roman church. There is mention of fantastic persons called "pagans" and others called "heretics"; and altogether the intellectual atmosphere in which Malebranche lives seems to be heavy with the incense of the oratory. The earlier part of the dialogue, on the data of the senses, gives us something more obviously connected with modern philosophy, but the ease with which Malebranche finds in his reasoning a justification for the simplest religious faith makes one remember the comments of Voltaire. The translation of his dialogues should be useful in giving to English and American students an impression of a vanished age.

C. D. B.

THE COMPARATIVE STUDY OF RELIGIONS, A SYSTEMATIC SURVEY. By A. G. Widgery, Lecturer in the Philosophy of Religion in the University of Cambridge. London: Williams and Norgate, 1923. Pp. xxiv+291. (Appendix, Index, and 20 illustrations.) Price 12*s*, 6*d*. net.

This book is a most useful and interesting survey of the chief religious customs and beliefs, among which those of today are given due prominence. The beliefs and general attitude implied in different religions are described as far as possible in the language of the sacred books of each religion, and there is no attempt to depreciate one in favor of another. The customs of worship, marriage, burial, etc., are given their place as significant of the characteristics of the general religions; and all these customs and beliefs are referred to the most obvious or generally recognized facts, such as suffering, crisis, etc., which indicate their place in life. It is seldom that a student of the history and literature of religion, who is not a propagandist for a particular creed, is able to see religion as a living contemporary experience; so many psychologists and anthropologists seem to assume that religion is essentially an abnormality or a primitive and obsolete complex of customs. On the other hand, men professing to be religious generally tend to be afraid of comparing their own with primitive beliefs. But Mr. Widgery has a very good sense of objective fact, even in regard to his own attitude, and he is able to explain and describe attitudes which are not his own without making us feel that they are somehow defective.

The weakest parts of the books are the illustrations, although it is a good point that some illustration should be offered. The pictures illustrative of Christianity all belong to the very late period, St. Peters in Rome and the Sistine Madonna. Surely, Durham or Chartres Cathedral or (if it must be

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in Rome) Santa Maria in Cosmedin, are more significant. Mr. Widgery has been for some years a professor in India, at Baroda College; and he gives us both description and illustration of contemporary Indian religion which are most useful. Throughout the book there are interesting details in regard to particular rites; but unfortunately the index is so inadequate that one cannot use it, for example, to compare the different marriage rites. It is to be hoped that there may be a second edition of this excellent book, in which the minor defects may be corrected and the whole work thus made more valuable to scholars.

C. D. B.

A SHORT HISTORY OF CHRISTIANITY. By Salomon Reinach. Translated by Florence Simmons. London: Heinemann, 1922. Pp. 227. (Full Index and Bibliographies.) Price, 10*s*. 6*d*. net.

This book is founded on the concluding chapters of Reinach's *Orpheus*. The author in his Preface says that the "Gospel lessons" have still a great future and he "does not share the opinion that they have as yet been superseded by some sort of a lay philosophy or theosophy." For this reason the history is that of an essential element in civilized life, and it is so brilliantly written that all students of social development must take account of it. The early sections deal with the structure of the New Testament and the author decides that, although Jesus was probably a real man, no exact knowledge of the facts of his life is now obtainable. The last chapter carries the story as far as the Modernist movements in the Roman church. No criticism should be thought to detract from the immense value of the book; but there are very obvious limitations in the outlook of the author. The history is rather that of Christian institutions than of Christian enthusiasms; the church fills a larger place than the saints. There is no attempt to express or interpret the driving force which gave the Roman church dominion over the Middle Ages. The monks, nuns, and friars are hardly given credit for the influence they have exercised; and similarly, although the author is, of course, aware that a religion is to be found chiefly among common folk and not among priests or kings, the record does not allow enough to the religious atmosphere. It is obvious that a short history cannot include everything and, in one sense, Christianity is to be explained by the institutions and official practices, such as the Holy Inquisition and the Wars of Religion, to which it has given rise. To omit these or to imagine that Christianity is a pure gospel of simple morality is to misread the facts. The churches are not corruptions of an original good, but natural growths of the very hybrid seed which was sown about two thousand years ago. But there is and always has been something more in Christianity. Perhaps M. Reinach takes this for granted, as it appears in his Preface; but unless it is stated in a record one might forget that it is enthusiasm which is the central fact in the history of religion. The eighteenth century did not distinguish enthusiasm from lunacy, and M. Reinach quotes Voltaire very often, thereby indicating his own affiliations. But we are now more advanced in psychology; and we should at any rate be more sceptical about ourselves than eighteenth-century sceptics were about their own wisdom. The history of the Christian religion, with all its evils as well as its varieties of vivid enthusiasm, still remains to be written.

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Volume XXXIV JANUARY 1924 Number 2

INTERNATIONAL RELATIONS AND THE LEAGUE OF NATIONS

COLONEL D. BORDEN-TURNER

In a letter addressed to von der Goltz in 1863 Bismarck wrote: "It is only by European treaties that European law is established. If, however, you want to apply the standard of justice and morality to these latter they must well-nigh all be abolished." This is not the cynicism of a disillusioned politician but the considered and almost regretful judgment of a shrewd and high-minded statesman. It is the recognition of a fact, a fact which was to be elaborated as a principle by the man whom Bismarck himself chose as the exponent of German political ideals. For Treitschke morality had no place whatever in international relations. Passionately honest and straightforward himself, courageous even to the degree of attacking Bismarck for his contempt for democracy, he placed the interest of the state far above any claim of right or justice. Self-interest, enlightened if you will, but self-interest, backed by force, was the only possible motive in the dealings of one state with another.

Contrast with this the tenor of the great speeches made by President Wilson in 1918, speeches applauded by the world and indorsed by statesmen of many nations. Not force, said President Wilson, but the moral dictates of the human conscience must determine our international relations. What was remarkable is not that what he said was new—it has been said over and over again from the days of Grotius onwards—

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but that the sentiments were so fully and widely approved. Men felt it was possible to conduct affairs between nations on this plane, the incompatibility of moral principles and interstate dealings appeared no longer to be a pitiless fact. President Wilson's voice as an influence on the world's progress seems to have been silenced, but the thrust given to universal thought, by his utterances of five and six years ago has brought into existence the League of Nations, the International Labor Office, and the Permanent Court of International Justice, machinery which has already proved itself adapted for the application of principles of justice and morality in the conduct of international affairs.

The day, however, is not by any means won; that the organs of Right as opposed to Might have been set up is an enormous advantage, but what has been established may be overturned or rust for lack of use; the moral impetus which created them has already largely spent itself, and something more than enthusiasm for right and justice is required if they are to endure.

To say this is not to belittle the desire for justice which possessed a world weary of the war: such compelling crises of high-mindedness have performed great service in the past; but men as individuals or as nations do not live on the heights and a great moral effort is inevitably followed by reaction. Were the existence of the League of Nations and its sister organizations to depend on the continuous application of principles of pure morality they would have little chance of survival; it depends, however, on something quite different. It depends upon the recognition by the world that it is to the supreme interest of all nations that there should exist and develop organs of international justice and co-operation.

Sixty years separate us from the days when Bismarck, strong in the belief that moral consideration had no place in international politics, planned the coup that was to bring Schleswig-Holstein to Prussia and lay the foundations of the

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German Empire. At that time the idea still prevailed that the advantages or welfare of one nation could only be increased at the expense of another, that the world held, so to speak, just so many prizes which any one country had the right to scramble for if it felt strong enough to try. International relations meant international contests, of wits and of force, with the victory to the stronger and more cunning.

But in 1863, some months before Bismarck's letter to von Goltz quoted above, something had happened symptomatic of the entirely new meaning which was going to be given to the word "international" and of the change of view as to the direction in which the interests of a country lie. In May of that year there was held the first international postal conference destined to result in the creation of the Universal Postal Union and to be followed by many other conferences of the same kind and by a host of international organizations inspired with a conception of the world totally different from that to be found in the writings of Treitschke and his followers. It was the conception of the world as an organism interconnected, interdependent, in which the well-being of the whole depends upon the proper functioning of each of its parts, and, still more important, in which the health of each part depends on that of every other part. That the organism had found its proper adjustment nobody could claim, no one can yet claim, but the great fertile idea had taken root, never to die, that the nations can get from one another only by giving to each other and to the whole.

That this should be an eminently moral idea is a happy coincidence, an evidence of that divine humor which manifests itself in many ways such as modeling the revolutions of suns and planets on that of the electrons in the atom, but its usefulness stands by itself and not in its morality. The ground was now found for the overthrow of Machiavelli and Treitschke, the last ground on which they would have expected to fight, that of national interest not of international morality.

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During these sixty years there has been enormous advance not only in the conception but in the actual fact of international interdependence. It is unnecessary to enumerate the threads of that delicate economic and cultural web, separately fine as gossamer, together strong as steel, which binds the world together, a nervous texture sensitive in every part to the slightest touch on any other.

So slow, however, is the world to grasp the significance of new facts or even to realize the facts, that it required some tremendous stimulus to enable it to take the leap from the dominating conceptions of centuries to a new outlook for the future. This stimulus was given by the torch of President Wilson's idealism. But for that the war might verily have been fought in vain; thanks to it the world has made a mighty advance; 1919 will be remembered in history not for the bewildering vagaries of its peace treaties but for the establishment of the League of Nations.

Let us make no mistake; self-interest rules and will continue to rule the nations. On one of the walls of an Arya Samaj temple in India is inscribed the noble motto, "No religion is higher than Truth." Facing it in an equally prominent position on another wall is, "Honesty is the best policy." The juxtaposition is still no doubt a source of merriment to European visitors. The Indian in his blindness accepts the most dishonored *cliché*. Let us, however, be bold and wise enough to admit that morality and justice will prevail in the world just in so far as they come to be recognized as the best policy. The world is finding out that "Give and it shall be given unto you" is not just highfalutin religious sentiment but sound economics. Twenty-five million pounds were loaned by the allies to Austria in the hope that Austria might stave off bankruptcy and pay them what she owed by way of reparations and what-not. These millions might just as well have been spent on occupying another piece of Germany for all they served to that purpose. But when the new piece of machinery

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of justice and international good-will was set in motion and the League of Nations applied the principle of "Give and it shall be given" Austria was revitalized and the benefactors are enjoying a safe 8 per cent.

Were all the nations to practice this principle all the time the world would rapidly become a utopia, but those who have no faith in utopias are not slow to point out that we cannot expect that countries will always consider it to their interest to act on these principles, that in fact there are few countries where we can hope for any such standard to be maintained, and, moreover, that nations are often led away by motives other than mere self-interest to do foolish and injurious things. The inference is that it is folly for us to trust to principles which would no doubt be most excellent had all countries reached our own level of intelligence, not to speak of morality, but which in the present state of the world are illusory.

The answer to these faint-hearted cavillers is that, though it is perfectly true that none of the nations will be faithful to their best professions all of the time, what can be relied upon is that most of the nations will come to scratch at the right time. They will not all be suddenly blinded to their self-interest that is to the upholding of justice and right. There is a very striking instance in point in recent history. When on the 31st of August last Italy suddenly bombarded and occupied Corfu, part of Greek territory, because Greece had refused to pay her immediately fifty million lire, that act was either (1) an act taken by Italy from motives of self-interest to vindicate her position as a great nation and to get the money demanded, or (2) an act taken by Mussolini to show what a strong man he was, or (3) an act due to temporary aberration. Whichever it was, it was an act wholly against the self-interest of Italy, as defined above, as Italy has more to gain by keeping on friendly terms with other nations than by doing them harm.

The effect of that act upon the whole world represented at the Assembly of the League of Nations was to rouse unprece-

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dented moral indignation, and indignation just as great in the states not present at Geneva. The function of the League was to focus and express this indignation which it did in the most complete manner. Had the resentment, however, been merely moral Italy might have afforded to neglect it. It was much more than that. Italy's action attacked not only the moral law but the vital self-interest of all but the most powerful states. Any country might experience the misfortune of having the nationals of a larger state assassinated on its territory. In Geneva itself, only a quarter of a century before, an Austrian Empress had been assassinated by an Italian anarchist. If it were liable to have part of its territory seized as a result of an occurrence it might have no sort of responsibility for, there was for it absolutely no security. The moral indignation was at bottom inspired by a very real self-interest. What asserted itself at Geneva and led to the evacuation of Corfu was the startlingly unanimous repudiation by the nations of the world in their own interest of the use of force in an international dispute. After all it will not be so very astonishing if the nations find out what individuals in civilized countries have long since discovered, that the perfection of the machinery of justice is a matter not of moral principle but of self-preservation. Another generation dominated by the teaching of men like Nietsche would mean the end of civilization as we know it. The League of Nations could not have come much earlier, for the world was only beginning to realize itself as a complex organic structure, but it has come in the nick of time to save the world from a return to the conception of international relations which dominated the world since nations first crystallized into form and found its final great expression in the German attempt of 1914.

The interest of each nation today lies in the development and perfection of the world organism, in strengthening the weaker parts, keeping all the connections clear, multiplying facilities of intercourse, and exploring every method of co-operation.

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Sir Henry Strakosch in a recent speech on the work done for Austria by the League said:

> It would be criminal to throw away this precious experience, and let the piece of machinery we have set up in the League of Nations lie idle and rust when it has already proved itself so efficient, and when the well-being and contentment of the population of the world is at stake. Our fathers built for us a wonderful economic machine, which has been instrumental in steadily raising the standard of well-being of the people. That machine we have damaged during the war. Do not let posterity say of us that we have used the peace to smash it completely.

The warning is salutary for we cannot go back to pre-war conditions of international comity; we must go on either to the shipwreck of civilization or to a larger, more thorough international co-operation, and to the latter end there is no instrument at present so effective and valuable as the League of Nations.

COLONEL D. BORDEN-TURNER

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THE LEAGUE OF NATIONS FROM A LAWYER'S POINT OF VIEW

JOHN H. WIGMORE

I propose to comment on three aspects of the League which seem to me to constitute its prime novelties and its special features of strength for future growth. One aspect belongs in the field of political organization; the second in that of the *mores*, or public opinion; the third in that of international law.

I. POLITICAL ORGANIZATION

In the existing forms of federated national life, we have been accustomed to use only two forms of state power and action, viz., that of the local state, and that of the federal state. For example, in the United States of America, the entire possible scope of state action is divided, according to our Constitution, between the local states and the federal government. All powers not expressly granted to the latter are reserved to the former. There are only these two forms.

In the allotment, moreover, the federal powers granted are those which were supposed to be only those necessary for the common national life. The subjects were those which (it was supposed) the individual local state could obviously not well regulate. For example, interstate commerce and coastal health-quarantine were obviously beyond any one local state's reach. On the other hand, local domestic and commercial life—the entire civil code and the ordinary criminal code—were left to each of the local states to regulate.

But, in time, the growing complexity and solidarity of national life revealed a large gap. The enumerated federal subjects did not suffice to fill this gap. For example, divorce proved to be beyond the effective control of any local state;

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so too commercial paper and banking, and many other subjects. Yet the federal powers did not include these subjects.

Thus, in the last twenty-five years, a new mode of action has been devised in the commercial field, viz., the National Conference on Uniform State Laws. Each state sends a delegation of three to five persons to an annual Conference. This Conference debates and adopts a draft uniform act. The delegates go back with this draft to their local states, present it to the legislatures, and the legislatures adopt it—if they see fit. They have indeed so seen fit in a majority of states for a large minority of the subjects. All this, be it noted, in fields where the federal power did not enter, and where the subject of national life was being seriously inconvenienced by the *de facto* inability of the local states to control transactions occurring without their own boundaries. The beneficent work of this National Conference has thus filled the gap between federal and local state powers, and has at the same time obviated the need of enlarging the cumbrous federal national machine.

Again, notably, in the Great War, another instance occurred. The federal government had the legal and nominal power to make a national draft of military service. But to exercise that power through federal military machinery was not deemed wise. The median method was adopted. The federal law laid down the general principles uniformly, but the local state governors were asked (asked, not commanded) to apply them. They responded patriotically; and each state voluntarily set up a civilian machine of its own, which administered these uniform regulations drafted by the federal President. There were only 40 military officers and 300 civilian clerks at Washington in the office of the Provost Marshal General (the President's deputy). But there were 40,000 civilian officials, and 60,000 miscellaneous assistants, under the governors in the several states. All orders were transmitted formally through the governors, and the governors (acting voluntarily) relayed them to their local state officials.

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This great machine dissolved at the close of the war. But it illustrated forcibly the fertile possibilities of this new type of associated action in a federated community life.

What is the essence of this new political method? It is this: Whenever local state powers, territorially limited, do not suffice to cope with evils or inconveniences arising from the interstate intercourse of individuals, *it is not necessary to organize and bestow a super-state power on some central power-holder.* It may suffice, instead, to *co-operate by an interstate conference* of delegates, agreeing on a draft measure of uniform action, and *presenting this draft again to the individual states for their voluntary adoption* (or rejection).

Note that this method has proved applicable in a federated nation which already recognizes a central federal government having only limited powers, and in which it would have been at least theoretically possible to enlarge those powers (as in the case of intoxicating liquors) to take care of the new subject. But much more is this method applicable and desirable where there exists as yet no central federal power, and where therefore this new method is the only one that can serve to meet the need.

Now it is this *new political method which is exemplified in the constitution of the League of Nations.* The parallel between the League and the National (American) Conference on Uniform State Laws is almost exact. The League Assembly is composed of delegates from the individual states, who deliberate upon measures of proposed uniform action; so does the Conference. These League measures adopted by the Assembly (or Council) have no intrinsic legislative force in any individual state; nor have the draft acts of the Conference. The delegates, in both cases, return home and solicit adoption by the home states; in the League, this is done by the secretariat. The sovereign home states, in both cases, are not bound to accept these conventions; and when they do, the measures acquire legislative force by that act of individual adoption,

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and not by virtue of the international Assembly's vote. And, in fact (not merely in law), the experience of both League and Conference has been the same, viz., that the adoption of the uniform draft measures is a slow, piecemeal process, proceeding gradually through the years, state by state falling ultimately but voluntarily into line.

All this is healthy enough, politically. State autonomy is not interfered with; and yet uniform concerted action, proposed after a representative central debate, and framed on a compromise basis fair to all interests, is ultimately obtained.

(All of which, by the way, illustrates the incorrectness of the alarming epithet "Super-State," as applied to the League of Nations.)

What name should be given to this new political method? I do not know. Let the political scientists give heed to it and invent a name; for it is going to be the real solution of (international or national) political action on the part of related independent communities which do not care to surrender themselves to a top-heavy centralized federal sovereignty.

II. THE MORES

Since Professor Sumner's exposition of the "folk-ways," much attention has been given to the important function of public opinion, especially in public morals.

The weakness of the *mores*-sanction is, first, that it is so long in forming, and secondly, that it ordinarily possesses no definite formulating organ.

But the last twenty years have been emphatically a period of organization of the *mores*, especially in the commercial and the scientific world. In the United States, in particular, national associations in the field of commerce and industry have grown with astonishing fertility. Ask any advertising agency to show you their lists of associations to whose members they can direct their publicity efforts on any conceivable subject. Ask the Conventions Bureau of the Chicago Associ-

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ation of Commerce to show you their list of the national conventions that are daily being held in the city of Chicago alone. It is an era of group-associations.

Some of them, to be sure, are veiled machines for fixing or stabilizing commodity prices. Hence, occasionally, they are checked by the mandate of the federal Supreme Court, applying the prohibitions of the Sherman Act and the Clayton Act against combinations to fix prices.

But for the most part they are healthy, natural efforts to form personal friendly relations, to exchange information, to study common conditions and problems, and to attain a common basis of efficiency by co-operation. In short, they serve to formulate the *mores* of the trade or group.

Their best example, in the commercial field, is the United States Chamber of Commerce, with a headquarters staff at Washington, a representative governing board, and a membership of perhaps two thousand local city-chambers. The National Chamber annually, but sparingly, formulates and submits one or two referendums to the member-chambers. When the votes come in, and are published, what happens? Nothing—except that *the mores have been formulated*, and the conduct of all American commerce is guided thereafter by the consciousness of that formulation.

In the scientific and philanthropic field, the international associations that serve by their annual meetings to formulate the *mores* are incredibly numerous. The late Paul Reinsch wrote a book on *International Unions* twenty years ago, describing some thirty or forty such unions. But the League of Nations now publishes a *Handbook of International Associations* which shows several times that number.

These unions, however, deal only with one subject each—bibliography, statistics, archaeology, and so on. And they have come to find that individual isolation has its drawbacks, and that there are common problems which require a common clearing-house.

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In short, the time had come, even without any Great War, when there had to be *an international clearing-house for co-operation in the entire scope of peaceful international activities*—economic, philanthropic, scientific. Such a clearing-house, in incipiency, is the League of Nations. Quite apart from its actual originating motive, viz., the suppression of war (i.e., aggressive political violence), there was a place waiting in the world for a central union for conference in all the fields of peace.

That place the League is filling.

If you doubt this, read the *Official Journal* for a single year. If you have not the patience to do this, read the World Peace Foundation's *Handbook of the League of Nations* (1923) or Mr. Arthur Sweetser's *What the League of Nations Has Accomplished.*[1]

I am a little impatient with those who dismiss any further attention to the League with the disappointed conclusion "It cannot stop war." Even if this were so, the League has a high function in assisting peace-time world-progress; and it is fulfilling that function. It will soon be a peace parliament more broad and complex than any national congress ever known. And this function is so real today that it constitutes the vital force which will insure the rapid growth of the League's activities irrespective of its success in the field of political violence.

Those who have never perused its proceedings are unaware of this vitality. But the League is leaving them all behind. It will soon be the mark of an ignorant educated man not to know annually what the League is doing. It is formulating the *mores* in all the fields of peace.

III. INTERNATIONAL LAW AND PROCEDURE

War was and is a method of procedure for settling controversies between nations. It was like wager of battle in the

[1] League of Nations Non-Partisan Association, New York, 1923.

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late Middle Ages. Seven hundred years ago the Pope issued a decree against this method of deciding private controversies; but it persisted for some time in Normandy and England. Its vogue was originally due to the lack of reliable courts to give rational decisions between powerful rivals. Its vogue disappeared as such courts arose and gained strength and received confidence.

War had to be, between dynasties (in the monarchial era) and between nations (in the democratic era), because there was no available impartial tribunal of settlement. It was supposed to be conducted (until the ruthless German military party repudiated all moderation and restraint) according to rules of propriety which aimed to minimize the area of disturbance and the extent of suffering. Note that it was a legitimate *method of procedure*—legitimate in extremity, because no other procedure was available.

But the Great War convinced all (for the moment) of the folly of not providing a non-violent procedure which could be substituted for war.

The League was framed to do this.

Here it should be noted that all human controversies are and must ever be divisible into two classes, viz., those for which there is already settled, by the *mores* or by law, some general rule of conduct, and those for which no general rule has yet been settled. The former class falls to the courts, i.e., a body which *applies* a general rule to a specific case. The latter class falls to the legislatures, i. e., a body which *formulates* and *makes* (or unmakes) a rule for a condition which is so novel that no rule yet exists or that old rules must be changed.

In short, courts alone are not enough, for their function is limited. A legislature also is necessary. The distinction is an old one (relatively speaking). No modern nation would think of uniting (as Rome did, and the Jews, the Chinese, the Egyptians, and all the old peoples) the judicial and the legislative functions in a single body.

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In modern international parlance, the distinction is usually expressed by terming the one class of questions *justiciable*, the other class *political*.

Since 1919, therefore, the substitution of another method for war signified that *there must be two bodies*—one for justiciable questions, and one for political questions. The United States delegates to the original Peace Conferences were always committed to the first proposition; but they had not risen to the conception of the second one. It was reserved for President Wilson to advance this idea, and to force it into the foreground. Hence the Assembly and the Council of the League of Nations. Hence, also, the League is and ever must be a different organ from the Permanent Court of International Justice. Both are indispensable.

All this leads up to the inquiry: What is the essential nature of this bipartite substitute for war as a procedural method to settle controversies?

The answer is that *it substitutes rational discussion for violence*—reason instead of force.

Now the connection of this with the Great War is that Germany imagined itself to have a controversy with other nations. It attempted to settle and win that controversy by force. Its military party had always cynically believed in force, and had always planned to win by force whenever their will should be disputed. The outbreak of Germany was simply the apotheosis of force.

Many of us saw this before the end of 1914. And when 1917 came, and President Wilson formulated the reasons for taking sides against Germany, he should have placed at the head of the list: "*To vindicate the Rule of Reason against the Rule of Force.*" Sadly enough, he was not inspired to do this. The thesis of self-determination was mistakenly substituted.

But the fact remained, and remains, that that war was fought by the allies to resist and rebuke the nation that apotheosized the rule of force. And thus the final fact emerges that

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the *true function of the League of Nations*, as the specific product of the war against war, *is to symbolize the rule of reason*, i.e., the settlement of political controversy by rational discussion of both interested and disinterested parties in conference assembled.

That such is the actual method of the League none can doubt who has either attended its sessions or perused its proceedings. I challenge anyone to read faithfully the *Official Journal* of any year's proceedings without experiencing a thrill of cosmic pride in the perception that the world's politics are for the first time being discussed and settled in a free, central, and universal forum.

The League is the arrival of the rule of reason. And this means, sooner or later, the exit of the rule of force.

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THE LEAGUE IN THE DEVELOPMENT OF POLITICAL INSTITUTIONS

J. M. BUTLER, M.P.

It is a common taunt that the immense achievements of natural science in the last half-century have no counterpart in the sphere of political institutions, that the machinery of democracy creaks and rumbles in the ancient ruts and has failed to improve and innovate itself to meet new needs. The taunt has some justice. But it is a fact that in recent years English-speaking statesmen have evolved in two instances a new political form of immense possibilities.

Wherever human beings have dealings together, they proceed to organize their relations on a basis sometimes of force, sometimes of agreement. As the circle of common interests widens, the organizations regulating common life expand also, and often the area under a single government increases. But it has been difficult for communities which possess and care for self-governing institutions to expand beyond a certain size without loss of self-government. Political freedom is a matter of institutions; that is to say, of machinery, and political difficulties may prevent the enlargement of a particular system of machinery to an indefinite extent. In ancient Greece where self-government had been developed in the city-state, the expansion of Hellenism meant the loss of freedom; the cities were absorbed in the Macedonian empire, and later in the Roman. Greece and Rome were acquainted with the representative principle, but failed to exploit it, and it was left to the Middle Ages to work out the institutions by which alone a community of the size of a nation-state might achieve self-government. Clearly, however, a national authority could not carry on the totality of the work of government in the same way as the sovereign body of the city-state could do it, and

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some degree of decentralization was necessary. The next step was taken when the thirteen North American colonies, stretching from the forty-fifth to the thirtieth latitude, left alone in unfamiliar independence and disheartened by the failure of confederation, determined not without misgivings to enter a federal union. The states were jealous for their sovereignty, and only those powers which federalist pens could prove to be the minimum required to make government possible at all were conferred on the central authority. It was even doubtful whether it would long be able to maintain them. "It will always be far more easy," wrote Hamilton, "for the state governments to encroach upon the national authorities, than for the national government to encroach upon the state authorities." The inevitable extension of common interests over the width of a continent has proved Hamilton wrong; but it is of course true that by no possibility could a single popular government at Washington have controlled successfully the affairs of thirteen, still less of forty-eight, far distant communities. Federalism has achieved what was before impossible—the extension of self-government to 120,000,000 human beings inhabiting a territory of hundreds of thousands of square miles, while yet remaining members of a single political system. So marvelous an achievement deserves the panegyrics of an Acton and a Dicey, and it has often been considered the last word in political resource.

Statesmen and writers of authority have accordingly looked forward in the past to federalism as the natural goal of the nations of the British Commonwealth, though sundered from each other by so many thousand miles of sea and possessed of such distinctive individuality. But others, impressed by these facts, have felt altogether skeptical about the future. Could federalism, they asked, a work so difficult of attainment in the United States, in Canada, and in Australia, ever provide an acceptable connection between such enormous differences of space, habit, and outlook? And if not, how could such

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opposites maintain any political tie at all? The event is showing. In typical fumbling fashion the genius of the British race is working out a system of connection infinitely looser than federalism, yet apparently capable of satisfying the need for co-operation in common affairs, a connection of which it may be possible to vaunt with the majestic optimism of Burke, but with happier augury, that "those are ties, which, though light as air, are as strong as links of iron." This gradually evolving relationship between the self-governing parts of the British Empire must profoundly interest the student of the development of political institutions. It is something unprecedented in the history of the world, a step beyond federalism, including in a single political system communities stretched over a far greater expanse of the globe, while maintaining to them far greater powers of regional self-government. The central organ of this new phenomenon is the Conference of Prime Ministers, each responsible to his own parliament, each free to give or withhold assent to any measure proposed, and in no way bound by a majority vote. Should any proposal be generally accepted, it must be carried out (so far as the several nations are concerned) by their several governments, unless in any particular case the government of one is authorized by the rest to speak and act for the whole. That is the theory of the new constitution of the British Commonwealth of Nations, a system officially described as one of "continuous consultation in all important matters of common Imperial concern" and of "such necessary concerted action, founded on consultation, as the several Governments may determine."

Continuous consultation and concerted action—that is the secret of this interesting new political form, under which so large a part of the human race is directly or indirectly governed. It is no less the secret of the League of Nations, to whose council and assembly just such a rôle is assigned by the covenant. They too are conferences of the ministers of self-governing states, each responsible to his own parliament, each free to

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give or withhold assent to any measure proposed, and in no way bound by majority vote; nor has the League of Nations any executive power or machinery save that of the several governments. It has a permanent secretariat, it has a number of commissions meeting occasionally, but except in the case of the two small communities of Danzig and the Saar Valley these bodies have no governmental or executive authority. It is true that the members of the League make to one another certain promises, of which the following are the most important: not to go to war suddenly and until peaceful settlement has been tried; not to go to war with a state which complies with a judicial award or a unanimous recommendation by the council; to break off relations, diplomatic, financial, and commercial, with any state that violates either of these promises, and to register all its treaties with the secretariat of the League for publication. None of these can be regarded as infringements of sovereignty in any more serious sense than are the engagements entered into by states which, like the United States, have signed arbitration or "Bryan" treaties. What the League of Nations does is to replace these various and varying bilateral agreements by a single all inclusive agreement, to which the sanction of an economic blockade (with the possibility of armed intervention to follow) is added. The responsibilities of the League of Nations in the matter of the treatment of racial, religious, linguistic minorities in certain European states are inherited from the concert of the Great Powers, which judged it necessary to demand some such guaranties in the cases of certain communities which attained statehood in the nineteenth century. They imply no right of administrative action on the part of the League, still less any duty of any individual member to intervene, nor is any such right or duty implied by the fact that the Powers holding mandates for parts of the former Turkish and German dominions present annual reports to the League, which submits them for comment to its permanent Mandates Commission. The

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mandate system is an attempt to standardize the best British and American theory and practice in the treatment of backward peoples; its hope lies in the pressure of public opinion mobilized by publicity, and in that only; the League has no means of forcible intervention, nor can it apparently revoke a mandate once given.

Thus the League of Nations does not establish an international executive, and of course it has no armed force nor police at its disposal, beyond any contingents which its members may spontaneously contribute for a special purpose. Nor does it set up an international legislature, for the resolutions of the assembly (even if unanimously adopted) have no legislative force; it can merely frame conventions to which the several governments are involved to adhere. It is therefore sheer perversity to regard the League of Nations as a world-supergovernment. On the contrary, it is a league of independent states using the machinery of continuous consultation with a view to concerted action in important matters of common concern. It must be admitted that continuous consultation is not too easy in practice, alike in the case of the British Empire and in that of the League of Nations. Prime ministers and secretaries of state cannot converse with one another in permanent session nor even (if they live oceans apart) in very frequent session. Even European statesmen of the first rank, Lord Balfour has said, cannot be expected to attend meetings of the League Council every two months; and beyond question its effectiveness has suffered from the fact, if fact it is. Mere diplomatic officials or resident commissioners cannot speak with the same authority. The difficulty is a real one, and we must accept it, while recognizing that it is likely to be progressively diminished by improvements in air transport and wireless communication, just as railways and telegraphs have transformed American federation. Rome was not built in a day. The constitutions of the British Commonwealth and the League of Nations are both as yet in the stage of adventure and experi-

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ment. Perhaps it is misleading to speak of constitutions at all; perhaps that word suggests rigid formularies and government based on force. In the days when it was fashionable to base civic duties on an imagined contract in the past, philosophers were wont to distinguish between two phases of the process; these were the earlier phase, the social contract proper, by which men were supposed to have agreed to live together in society, and the later phase, the contract setting up a government. If we choose to draw an analogy between the affairs of individuals and of peoples, we may amuse ourselves with the conceit that the covenant of the League embodies the social contract of the nations. But the world is far as yet from the second stage, and from anything of the nature of a world-government.

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THE TECHNIQUE OF THE LEAGUE OF NATIONS

ROTH WILLIAMS

The technique of the League is the art of organizing conferences. The League of Nations is essentially a series of international conferences, centering on certain permanent machinery like beads strung on a thread. The purpose of the conferences is to work a system of co-operation and peaceful settlement of disputes, whose constitution is the Covenant, and which fifty-three states have pledged themselves to apply by becoming members of the League. The whole constitutes an organized effort at putting international relations on a new basis, by lifting them to the plane of discussion and compromise and keeping them propped up on that plane by obligations so framed as to be directed against the state that tries to revert to force as a way of imposing its view.

A discussion of the technique of the League must deal with the intermediate portion of this continuous international effort, with the portion which at the edges shades off into a record of the League's work, a description of its organization and an analysis of the policies of the states members of the League. In other words, it must show the League system in action—how policies are carried out through League machinery and how the existence of the machinery and obligations embodied in the Covenant in their turn react upon the trend of national motives, that is, influence policy; how the nature of international relations is slowly being altered as the League idea and system settle deeper and deeper into the life of the world and gradually edge out war; how an organization of the world is gradually being evolved, not into a federation of nations, much less a super-state or world-state, but into a free association of states, which, although sovereign, have agreed to respect certain mutual rights and assume certain responsibilities.

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The League was founded at the end of the war by nations that realized some attempt must be made to give political expression to the growing interdependence of modern nations. This interdependence is bound to increase, for it is the child of science and science itself is still in its infancy. The world cannot stand still—civilization specializes as it advances and mankind must choose whether it is to specialize in preparing for war or in organizing peace. If we do the former, we shall certainly destroy our civilization in the near future and revert to something like primitive conditions, for war becomes ever more destructive, not only in the material havoc it causes, but by the way it poisons men's minds. Europe's worst devastated region is the war mind.

The one cardinal fact to remember about the attempt embodied in the League is that it in no way abates any jot or tittle from the national responsibility of the nations concerned. The foundation of the League does not relieve the states members from having a foreign policy, but merely means that they have undertaken to conduct a foreign policy based on the obligations and machinery brought into existence by the Covenant. Making the League what its founders dreamed—a world-organization guaranteeing a new world-order—depends wholly upon securing enlightened foreign policies in the various nations. Questions of constitutional reform and completion of the League's membership are secondary in that they depend upon the realization of this condition. It is the task of public opinion in each country to see that its government has the right kind of foreign policy. The fact that the various governments have under the Covenant pledged themselves to adopt certain principles and methods facilitates this task, serves as it were to polarize the forces of democracy and progress by giving them a rallying-point and a common basis for action. Hitherto while within a state there is always a tacit agreement between different parties that they are seeking the same aim—variously defined as the greatest good of the greatest number,

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or progress, or the good of the state—by different methods, there has been no such agreement as to ultimate aims between nations. International anarchy, in fact, had gone so far before the war that it was often believed the good of one nation could be measured by the extent to which it injured its neighbors, that nations were in some way rival and "naturally" hostile units. Today the mass of public opinion in most countries is agreed, more or less ignorantly, apathetically, and hypocritically, it is true, but still outwardly agreed, that at bottom the best guaranty for the peace and prosperity of every country would be the existence of a strong and all-inclusive League of Nations, and that the present League should be developed in this direction. Each country has different views as to the relation of its own particular problems in foreign policy to this ultimate aim, just as each party within a state has different views of what constitutes the good of the community, in accordance with its own special position and interests. But this is right and proper—the whole case for the League rests on the fact that it corresponds to the enlightened self-interest of the states members and is, indeed, nothing more nor less than a common-sense attempt to meet a crying need. It is of enormous importance that the nations of the world should at last have some permanent and common object to work for. The first step is always the hardest—technically and psychologically it will now be infinitely easier to revise the Covenant and to include Germany, Russia, and the United States of America in the League than to attempt to set up any League or Association of Nations *de novo*. Contrariwise the break-up of the League and a return to international anarchy would be felt in most countries as a disaster. The League has furnished a lowest common denominator in international politics.

For purposes of analysis it may be said that the League system is founded on two principles—that of the clearing-house and that of the round table—and comprises three kinds of

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machinery, namely, that for the settlement of disputes, for co-operation in certain non-political subjects, and for carrying out special tasks (such as international administration, supervision of mandates, and protection of ethnic minorities). But it should not be forgotten that the various parts of the machinery interlock and that the system works as a whole, so that any question dealt with through the League involves the application of both the principles on which the League is based. The League is worked by intergovernmental conferences—the Assembly, Council, and technical conferences —which are prepared and whose decisions are carried out by machinery such as the technical organizations, advisory commissions, and Secretariat-General. Getting the governments together in conferences is the application of the round-table principle; preparing, collecting, and distributing information through the technical organizations and the Secretariat is the application of the clearing-house principle. The whole constitutes a sort of continuous, loose, organic relationship between a number of independent states, something more than sporadic international conferences, and a frank recognition of the fact that isolation is impossible in the modern world, but something different in kind from a federation of nations or any attempt at a world-state. The League's activities, indeed, steer a practical middle course between the futility of the debating club and the pretentions of a would-be super-state, which is why the League is accused (sometimes by the same people) of being both, although it is neither.

The two chief conferences of the governments members of the League and the two chief organs for the settlement of disputes are the Assembly and Council. In the Assembly the fifty-three governments members of the League meet on a footing of equality, each with one vote and not more than three delegates. In the Council the four great powers—France, Great Britain, Italy, and Japan—are permanently represented, while in addition the Assembly elects six temporary members from

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time to time.[1] The states members of the Council send one delegate each to that body. The Assembly meets once a year, the Council once every two months. Either can be summoned in extraordinary meeting at short notice. The Assembly lays down the general lines of action for the work of the League organizations from year to year, reviews the work of the League during the previous year, admits new members, and votes the budget. The Council acts as the body for supervising the work of the various League organizations. Both the Council and Assembly may be used as bodies for mediating between states engaged in a dispute. All states members of the League have undertaken by signing the Covenant to submit disputes either to the Council or the Assembly for mediation, or to the Court or some other body for arbitration or judicial procedure, and to refrain from hostile action for at least three months. Under Articles X and XVI the states members of the League further undertake to protect each other against a state that violates these obligations.

There are three criticisms very generally made about the constitution of the Council and Assembly which are worth discussing for the light they cast on the realities of international life and the extraordinary confusion of thought still existing on these questions in many quarters. These criticisms are (1) the fact that the great states are permanently represented in the Council and so not on a footing of equality with the small states in the League; (2) that Assembly and Council delegations represent governments and not "peoples" in the sense of being elected by their respective Parliaments or nations; (3) the fact that, except for certain specific questions, votes of the Assembly and Council have to be unanimous to consti-

[1] The arrangement which it is proposed to put into force from September, 1924, on is that two of the temporary members should retire each year and thereafter be ineligible for re-election for a period of three years. In this way the term of office of temporary members of the Council would be three years, continuity would be secured, and while no state could consider it a matter of prestige to be re-elected indefinitely, there would be no absolute and mechanical system of rotation in which every member of the League, however unsuitable, would in time become a member of the Council.

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tute decisions.[1] Besides these three criticisms there is an objection very current in America to the existence of an Assembly or Council at all, coupled with the belief that the setting up of an International Court with compulsory jurisdiction, the "outlawing of war" and the "codification of international law" would be a sole and sufficient means of insuring peace.

As to the first objection, it should be obvious that there must be a compromise between the claim of the great states to be represented in the League in proportion to their size, population, and importance in the world generally, and the claim of the small states to equality in the name of the theory of sovereignty. The same problem was met in the United States when the thirteen original states were federated by means of the United States Constitution. The necessary compromise was then reached by giving the federated states equal representation in the Senate, but having them represented in proportion to their populations in the House of Representatives. Within the League the object was not to federate a number of states, but to set up a voluntary association of independent nations. Consequently the compromise between the great and small states was achieved in a different form, corresponding to the difference in what was being attempted. That is, in both the Assembly and Council governments are represented, but in the Assembly all the governments members of the League meet on an equal footing, while in the Council the great powers are permanently represented, and a quota of small powers elected from time to time by the Assembly. The relations between the Assembly and Council were purposely left vague in the Covenant so as to allow them to develop and change as the relations between small and great

[1] The exceptions are (1) admission of new members, which requires a two-thirds vote of the Assembly; (2) amendments to the Covenant, which require a three-fourths majority of the Assembly including all the members of the Council; (3) election of temporary members to the Council, which requires a mere majority of the Assembly; (4) all questions of procedure, including the appointment of committees, which requires a mere majority of the Council or Assembly; (5) votes recording a decision on a dispute, in which the votes of the parties to the dispute are not counted; (6) election of judges to the Court, which requires a mere majority in both the Council and Assembly.

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states change. Most of the objection to the privileged position of the great powers on the Council arises out of the fact that the only great powers members of the Council are at present the Principal Allied Powers, who still, although in a continually slighter degree, act as a single group on certain occasions. This condition, however, is bound to disappear in time and will come to an abrupt end the moment Germany, Russia, and the United States enter the League. It will then be seen that great and small powers do not, as a matter of fact, act as rival political groups, but that on any conceivable issue there will be some great powers and some small powers on one side, and other great powers and other lesser powers on the other.

Objections Nos. 2 and 3 raise fundamental issues and are interconnected. The truth is that with the current conceptions of sovereignty any league of the existing nations must be an association of governments. The object of founding the League was to put international relations on a new basis, to insure that they be conducted according to new methods, methods calculated to obviate war. But in all existing states authority to conduct public affairs, whether internal or external, is vested in governments. The governments are in their turn generally chosen by and responsible to parliamentary majorities elected on a universal franchise, that is, may be more or less democratic. But it is governments alone that can commit their respective nations to any course of action or can assign the moneys necessary to carry out any measure, or indeed to keep the League in existence at all. And no government will allow itself to be committed to a course of action or to spending money by a majority vote of foreign nations. Hence the necessity for the League being a league of governments and for unanimity on all but certain matters. The way to democratize the League is to democratize the governments members of the League and specifically to democratize their conduct of foreign affairs.

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This brings us to the idea that a court with compulsory jurisdiction, the outlawing of war, and the codification of international law would alone insure peace. This view overlooks the fact that at bottom international disputes almost always represent attempts to change the existing state of things. Because nations are living in a state of anarchy, they transact business with each other by bargains, deals, and *quid pro quo* arrangements of various kinds, like barter trade between savage tribes. When this process runs smoothly we have the ordinary working of diplomacy. When there is a hitch, we have a dispute or crisis. If the dispute or crisis is pushed far enough it is apt to spill over into war. In other words, international relations are today unorganized, anarchic, and, consequently, international disputes are usually not confined to questions of law or fact, but occur as a tangle of economic, political, legal, and factual issues. The settlement of such disputes, while it may include giving verdicts on issues of law and fact or adjusting competing claims, means at bottom making international changes that involve international co-operation, government action, compromises between governments, and so forth. Thus the settlement of the Aaland Islands dispute meant a pledge by the Finnish government to give a wider measure of autonomy to the Aaland Islanders, and an undertaking by ten governments to respect and guarantee a certain form of neutralization of the Aaland Islands. The Austrian settlement, although primarily concerned with the economic rehabilitation of Austria, also involved settling an acute conflict between Italy and the Little Entente as to the respective relations of these countries to Austria. The appeal of Albania to the League for delimitation of her frontiers and the expulsion of the invading Yugoslav army developed into a scheme of technical assistance in the reconstruction of the country, involving pledges for certain kinds of action or self-denying ordinances by a number of governments.

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Through the League system an attempt is being made to introduce elements of order and the beginnings of organization in the tangled anarchy of international affairs, by providing machinery through which international disputes can be analyzed into their elements and each dealt with by the appropriate body. Thus through the Court and its boards of technical assessors, as well as arbitration and conciliation commissions and League technical committees, matters of law and fact can be dealt with and disputes arising out of a desire to change things be transmuted into schemes of compromise and co-operation to effect the changes desired. But it is essential that a group of governments—both those interested in the matter at issue and those interested only in getting a stable settlement—should remain the center of this process of reducing a dispute to its elements and then building them up again as an agreed scheme, so long as governments remain the centers of power and authority in their respective countries. Otherwise, indeed, the process could not be got under way for it consists in pledging governments to action.

In other words, giving the International Court compulsory jurisdiction, codifying international law, and outlawing war, while all matters of the highest importance and objects for which every believer in the League idea should strive, are themselves only part of a much wider and slowly developing process of putting international relations on a new basis. The great powers, including the United States, have all flatly rejected compulsory jurisdiction, but can adopt it whenever they wish by signing the optional clause to that effect which is part of the Statute of the Court. The work of the League itself is developing and clarifying international law to the point where it can be codified. The easiest way to outlaw war, once a sufficient number of states had been convinced, would be to expand certain articles of the Covenant in this sense; until nations *are* convinced, there is no way of outlawing war.

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The fundamental fact to realize is that the only way to prevent war is to organize co-operation, that is, to replace the barter trade methods of today by a process of constant change and adjustment, arrived at in regularly recurring international conferences taking place on the basis of a recognized charter of rights and duties, and with a legal organ for awards and interpretations on questions of law and fact. To run the affairs of the world on a basis of association would be as impossible without the Council, Assembly, and technical conferences as it would be to govern the United States with merely the Supreme Court and without Congress. Hoping that the world's affairs can be conducted peacefully by the sole aid of a court and without associating the nations of the world is like trying to make bricks with straw alone. The only way to make peace permanent is to canalize the forces making for change and progress so that they can run smoothly and gradually instead of mounting up until they break out in devastating explosions. These forces can be canalized only by giving political expression to the interpendence of modern nations. Giving the Court full powers is only a part, though a vital part, of this task.

Closely connected with the misconception of the nature of international disputes that has just been discussed is the belief that the League's activities in the field of economics, public health, control of the opium traffic, suppression of the traffic in women and children, etc., are a waste of time and effort in that they distract the League's attention from the central task of preventing war. The prevention of war is thought of as a specific and exclusive function, like digging potatoes or swimming the Channel. The truth is, of course, that the more nations work together and grow to depend on each other in certain matters, the more likely they are to come to agreement on other questions, and so the less likely to strain their relations to the danger point. Joint action between nations in the questions of public health, control of the opium

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traffic, etc., is not only worth while because it lessens the sum total of needless human suffering, but is indirectly valuable in that it strengthens the machinery and habits of co-operation and induces mutual confidence and good feeling. In proportion as states members of the League realize their pledges under the Covenant to establish equitable tariff, trading, and transport conditions, harbor and waterway rights, etc., among themselves, the danger of war over such things as right of access to the sea, trade routes, raw materials, and markets will be obviated.

If the terms of the Mandates are faithfully carried out the same applies to Colonial conditions, and if the Minority Treaties are upheld so that national minorities become loyal and contented, there will be no wars on Irredentist grounds. The fact that a commissioner appointed by the Council acts as adjudicator of the relations between Danzig and Poland, on the basis of treaties defining the status of the Free City and subject to appeal to the Council, is a compromise between Poland's desire to have access to the sea and the national claims of Germany that in one form or another had to be made and must be kept under international guaranty. The administration of the Saar Basin is a temporary compromise between the desire of France to annex the Saar territory, or at least to subordinate the lives of its inhabitants to gaining possession of the coal mines, and the wish of the German inhabitants to remain citizens of their mother-country. It is unfortunate that the Allies should ever have made such a compromise at the Peace Conference—the just solution would obviously have been to stipulate for additional deliveries of coal from Germany —but once it was made it was better that it should be put under the guaranty of the League than under that of the Allies. Otherwise the Saar today would be in the condition of the Ruhr and the Rhineland.

At present the nations of the world manage to co-operate honestly and whole-heartedly only on questions far removed

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from politics. That is why the United States and Germany and even Soviet Russia take part in the League's work on social and humanitarian questions. Questions of trade, transit, and finance are evidently more nearly bound up with political matters, and work on them cannot get beyond a certain point so long as the Allies are still at sixes and sevens with each other and some of them bent on destroying Germany and ostracizing Russia, while the United States washes its hands of the whole business of salvaging civilization and at the same time makes the work of salvage almost impossibly difficult by demanding of the Allies forty-three out of the fifty milliards of gold marks anyone expects Germany can ever pay. Until Germany and Russia are in the League the Minorities Treaties cannot function properly. In general the League can become strong and efficient only as a result of the completion of its membership and the liberation of public opinion from the pressing cares of today to the task of seeing that the provisions of the Covenant are carried out.

On the side of co-operation, too, the motive power and guidance behind the working of the League system is a matter of the policies of the governments members of the League. The general lines of action for the work of the League technical organizations are laid down at conferences of the members of the League, either at the Assembly or special conferences. Supervision of the execution of this work is intrusted to a group of the governments members of the League meeting every two months in the Council. The preparatory, advisory, and routine work is carried out by experts in the standing committees, which meet frequently, and by the officials of the Secretariat, which functions continuously. To take a concrete case: The holding of a special conference to draw up a European railway convention in the autumn of 1923 was decided upon by the Third Assembly, which passed a sum for that purpose in September, 1922, when voting the 1923 budget of the League. The first step was the collection of information by the officials

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of the Transit Section of the Secretariat. The next step was the consultation of private railway experts and of government railway officials for an examination of the question from both the theoretical and practical aspects. A scheme was then drawn up and submitted to the full Transit Committee, which is made up entirely of government officials, representing every phase of Europe's transit problems. This committee drew up a draft convention, which was circulated to all the governments concerned, together with a report embodying the relevant facts, three months before the date of holding the Conference. The governments were thus furnished with a basis for discussion, with all the necessary information, and with plenty of time to think out what their attitude should be and what representatives they should send to the conference that was to frame a railway convention. In general the relation of the Secretariat to the governments may be compared to that of the Civil Service to the Cabinet in, e.g., England. At every step of the preparations for the railway conference there was the possibility, through the Secretariat and members of the committee, of "sounding" the governments concerned, forestalling difficulties, telling one government what another was likely to do in certain contingencies and so forth. There was also the checking of the main phases of the process by the Council, as well as sufficient publicity to insure a receptive and intelligent public opinion. These methods—constituting a sort of international "follow-up" system—have a wonderfully solvent effect on stubborn and obstructive governments and insure a conference working smoothly and producing results when it is held.

The analysis just made of the nature of the League itself and the way it works clears the way for an examination of the relation of the League to the Peace Treaties. The League of Nations is an association of states pledged to certain methods of conducting foreign affairs. Some of the states members of the League signed certain treaties, known as the Peace

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Treaties and constituting for good or ill the basis of most international relations today. To separate the League from the Peace Treaties would, therefore, involve either forbidding membership of the League to states that were parties to the Peace Treaties, or stipulating that no question arising out of the Peace Treaties should be dealt with through the League. The former alternative is impossible, since it would confine membership of the League to Russia, the United States and the ex-neutrals, and exclude the other nations of the world. The latter alternative would erect present practice into an eternal principle. The fact is that the Allies in the Peace Treaties set up a system of reparations commissions and other inter-Allied bodies for dealing with most of the major peace-treaty questions not settled on the spot, and that they have ever since arrogated to themselves the exclusive right to interpret and apply the Peace Treaties and dictate the results to the world in meetings of representatives of the Principal Allied Powers that were called, first, the Supreme Council and now the Ambassadors' Conference. It was only when specifically bound by the treaties themselves (as in the case of mandates, national minorities, the Saar, Danzig, and certain questions of interpretation or mediation on boundaries, etc.) that they consented to deal with these questions through the League. This determination of the Allied Great Powers, who are the principal members of the League Council, to run the affairs of Europe on the basis of a dictatorship *à trois*, is the chief reason for the League's weakness and Europe's present plight. It is, of course, the antithesis of the whole idea for which the League stands. It is a *de facto* separation of the League from the Peace Treaties.

The only case when the Allies abandoned the peace-treaty system of dictatorship in favor of the League system of co-operation was when they had, through the application of the former, brought Austria to the verge of famine and social dissolution. The Allies then withdrew the Austrian reparations

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commission, waived their reparations liens for twenty years, induced the United States to do the same after great difficulty and long delays, and turned the whole question of putting Austria on her legs over to the League, that is to a body of which Austria was a member as well as the Allies, and where she was represented for the purpose on equal terms with all the other powers concerned. The change from dictatorship to co-operation was complete and the upshot was, as everyone knows, the one solid and indubitable piece of international reconstruction in all Europe.

To make the League what it was meant to be and get the world out of the mess in which it has been left by the war and the so-called peace, it is necessary first of all to bring about such settlements with Germany and Russia as will enable those countries to take a permanent seat in the League Council,[1] and after that to deal with *all* international questions through the League that cannot be settled by the ordinary processes of diplomacy. From interpretation and application of the Peace Treaties through the League in co-operation with ex-neutrals and ex-enemy powers to the invocation of Article XIX of the Covenant in favor of peaceful revision is an easy transition. But between the present system of looking upon peace-treaty questions as an inter-Allied monopoly to revision of the treaties through the League lies a psychological abyss.

In the light of these considerations it would appear meaningless or sinister to demand the "separation" of the League from the Peace Treaties, and there would seem on the contrary every reason for insisting that *all* international questions, whether arising from the Peace Treaties or not, should be dealt with on the international basis and by the open and fair methods prescribed in the Covenant. But American and to

[1] I say nothing about the United States, because everyone knows that the states members of the League would immediately accede to any terms or reservations the United States might demand as the price of their entry. The extent of the world's eagerness to have America's help in reconstructing civilization is the measure of America's *gran' rifiutto*.

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some extent Canadian opinion has interpreted Article X of the Covenant[1] as an obligation on the part of the members of the League to uphold the *status quo*. This view ignores Article XIX of the Covenant, which says that "the Assembly may from time to time advise the reconsideration by members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world." It also ignores the fact that in their covering letter accompanying the communication of the Versailles Treaty to the German government the Allied and Associated Powers pointed to the League as the instrument for the peaceful revision of the Peace Treaties. Nevertheless, as the result of Canadian insistence the Juridical Committee of the Second Assembly interpreted Article X to mean merely that the Council should recommend to the members of the League what action they should take under Article XVI against a state that went to war without submitting the dispute concerned to the League for mediation or arbitration. This interpretation specifically declared that Article X did *not* mean any obligation to uphold the *status quo*. At the time of writing, the Juridical Committee of the Fourth Assembly has just voted a resolution declaring that in making its recommendation the Council will take into account notably the geographical situation and special conditions of each state, and pointing out that it is a matter for the individual states members of the League to decide for themselves to what extent and in what way they consider it necessary to give effect to the Council's recommendation. The Canadians have declared themselves satisfied with this interpretation, which they consider removes any fear that Article X implies the obligation to uphold the *status quo*. Meanwhile Article

[1] "The members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League. In case of any such aggression or in the case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled."

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XVI was revised and "watered down" greatly by the Second Assembly, at the instance of the ex-neutrals.

This sublimation of the general guaranties contained in the Covenant—whose corollary is the work on guaranty treaties and other regional understandings among groups of states members of the League—serves to emphasize the fact that whatever some of its founders may have intended the League has, during the course of the last three years, developed into a loose association of states for conference and discussion.

To sum up this discussion of the League's technique, it may be said that since the end of the world-war an increasing number of states have been groping their way, in a fumbling uncertain manner and for the most part unconsciously, toward a new and larger synthesis of mankind, within which the seeming opposites of order and change, unity and independence, should be reconciled. We have come through the family to the clan, from the clan to the tribe, thence to the nation, and now, through the most frightful upheaval the world has ever known, we have received a stern warning that it is time to take the next step. It used to be believed that world-peace could be achieved only through world-conquest and world-unity under the authority of the Pope and the Emperor—the model was the Roman Empire. Of late forward-looking men and women have dreamed of a federation of nations, a sort of United States of the World or at least of Europe, with Switzerland and the existing United States as the models. It may be doubted whether we are actually moving in this direction or whether there are any signs of our doing so in the immediate future. At present it looks rather as if through association we were going to get a future organization of the world on the model of the independent nations within the British Commonwealth, or of the relations between the three Scandinavian states. What forms this association will ultimately take, and what will happen to the idea of sovereignty as it grows it is difficult to say. In proportion as the war mind dies

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out and enflamed nationalism is recognized for the poisonous and anachronistic thing it is, the elements of sanctions and guaranties against attack may be expected to weaken and eventually drop out of the scheme entirely. There might be local federations or compromises between federation and association rather like the old Ausgleich in the Austro-Hungarian Empire. If we move from the present monist to a dualist or pluralist organization of the state with, for instance, a supreme economic as well as a supreme political authority, we might have not only the governments, but the supreme economic organs also directly linked up. Possibly autonomous boards may, on the basis of international conventions, run questions of through traffic, international public health, rationing of raw materials, etc., on the analogy of the International Postal Union. Possibly such bodies as the International Federation of Trade Unions, the International Co-operative Alliance, the Union of Chambers of Commerce, the International Institute of Agriculture, may extend and strengthen their international ramifications, and, through the League technical committees or otherwise, take a direct part in the guidance of affairs. Possibly, too, Liberal and Conservative parties may imitate the Socialist movement and organize themselves internationally. Possibly, in order to give expression to this idea and to help in the education of public opinion, the Inter-Parliamentary Union might be developed into an International Consultative Parliament, functioning side by side with the League organizations proper. Perhaps, in order to make sure that the Council should hear disinterested and enlightened views on the matters before it, this International Consultative Parliament might even elect a few persons of high repute and wide knowledge of international affairs to act as assessors, that is, to take part in all the proceedings of the Council, but without the power to vote. All these and other possibilities might occur in the course of trying to imagine how the world could be organized for peace on the basis of

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free association and enlightened patriotism. But we must avoid dogmatism about the distant future. Let us solve problems as they arise, with a dim general idea of whither we are going and a lively sense of the black gulf that yawns at our feet if we stray from the path or try to lie down and go to sleep beside it. But let us not attempt, on the basis of our imperfect knowledge and poor imaginations, to prescribe the decisions that may be taken by happier and wiser generations.

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THE PLACE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE WITHIN THE SYSTEM OF THE LEAGUE OF NATIONS

A. HAMMARSKJÖLD

I

The central organisms of the League of Nations are the Assembly, the Council, and the permanent Secretariat. Around these bodies are grouped a number of commissions, conferences, and committees provided for by the Covenant or created as a necessary consequence of the duties assumed on behalf of the League by the Council. Apart from these central and outlying organisms there is the Permanent Court of International Justice, the establishment of which was made incumbent on the League by Article 14 of the Covenant.

The history and general contents of the Court's statute and rules have been dealt with in a number of publications which will provide those interested in the matter with all necessary information. A short but exhaustive summary in this respect is given in the pamphlet recently published by the Geneva secretariat. The following lines will therefore be devoted to a somewhat different aspect of the subject, namely, the place of the Court within the system of the League. This question will have to be approached successively from the administrative point of view and from that of the Court's duties and functions.

II

The Court is created by the League. Acting under the treaty provision above mentioned, the Council at a very early stage of its activity took steps to have prepared a draft plan for the organization of the Court. The plan was subsequently adopted by the Council and, later, by the Assembly, as the statute of the Court provided for in the Covenant.

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But this is not all. It was the existence of the League as the community of states juridically organized—with, as representative organisms, the Assembly including delegates of all members, and the Council comprising as of right mandatories of the Great Powers—that made the creation of the Court at all possible. On previous occasions schemes had been prepared for the establishment of an international Court of Justice, and attempts had been made at their practical realization. But even the most promising among them had failed, because no agreement could be reached on the fundamental problem of the method of electing the judges. This difficulty was overcome by the League in a surprisingly simple and effective manner, thanks to that feature of its organization which has just been mentioned.

It should not, however, be forgotten that the fundamental reasons underlying its success were more remote. Between the earlier failures and the results now arrived at there was a great war, immediately after which the atmosphere was more favorable for achievements in the domain of international co-operation than for centuries past and maybe for centuries to come. Further, on the committee which drew up the original plan for the creation of the Court there sat a great American lawyer, and it was he who first gave expression to the idea which eventually led to the solution of the difficulty. But this idea he derived not directly from the constitution of the League but from the history of the Constitution of the United States of America. The North American states had in 1787 been faced with the problem of striking a balance between the claims of the greater among them to preponderance, and that of the smaller to equality. It was a similar difficulty which had wrecked all earlier endeavors to create a real world-court. Now, the creation of the League, by instituting side by side the Council and the Assembly, had in fact resolved an analogous problem. This led Mr. Root to think that it was in the direction of a concurrent vote by these two bodies that the

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solution should be sought. If we are thus led back to the truth that it was the organization of the League that rendered possible the establishment of the Court, we are at the same time once more made to realize that underlying everything was the fact that for a brief, rapidly passing moment the greatest part of the world was animated by the same spirit of co-operation which in large and composite states gives precedence to general and enduring interests over more immediate, individual claims. Again, the adoption by the organisms of the League of the instrument which became eventually the Court's state, did not call the Court into being. The Court was only endowed with life upon the acceptance of this instrument as a separate international convention by a number of individual states, in accordance with the forms laid down in their respective constitutions. The result is that, constitutionally speaking, the Court has an existence which is independent of that of the League. Supposing for the sake of argument that the League at some future time should fall into abeyance—because the spirit in which it was created and without which it cannot live had waned—the Court would no doubt continue to subsist in law as between those states who have ratified its statute. But, unless in an emergency of this kind the Court's statute were amended in certain respects, the Court would only continue to exist in theory. It would, indeed, be necessary to make provision for filling any vacancies on the bench otherwise than by means of a concurrent vote by the Assembly and the Council. And it would be indispensable to find another means of financing the Court than by including its yearly budget as a chapter of the general budget of the League of Nations. It is in these two respect—the election of judges and finance—that administrative links exist between the Court and the League. This is not the place to discuss the strength of these links. It will be sufficient to state that it is clearly recognized that they cannot lead to interference, either direct or indirect, on the part of the League as a political organization, in any

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respect of the Court's work; and, as concerns the future, that, once the Court has been constituted thanks to the machinery of the League, it is conceivable that it might be perpetuated by some other device, just as it is conceivable that the states which have accepted the statute might, in an emergency, find some means of paying to the Court contributions broadly corresponding to that percentage of their contributions to the League budget which under the present system is handed over to the Court by the League's treasury. These states form the vast majority of the states of the world. It might even be a tenable position to argue that in such an eventuality the missing contributions of members of the League which had not ratified the statute, would be balanced by fresh contributions from states which in these circumstances might see their way to adhere to the Court, with which they had hitherto preferred to remain unconnected.

III

The League of Nations as an organization may, having regard to its main object, be described as a free association between states for the prevention of war. According to the preamble to the Covenant the League aims at "achieving international peace and security by the acceptance of obligation not to resort to war. . . . ." How have these lofty ideals taken shape in the text of the Covenant, and what, having regard to the powers conferred upon it, is the rôle assigned to the Court in the work of realizing these ideals?

The undertaking not to resort to war is developed as an obligation to have recourse, should the method of direct diplomatic negotiations fail, to one of several pacific methods for the settlement of international disputes. The methods specifically mentioned by the Covenant are arbitration and mediation. As to the choice of the tribunal of arbitration, the widest liberty is left to the parties. Mediation is to be undertaken by the Council, which is, however, free to act through

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the instrumentality of any individuals or persons which it may select. There can be little doubt that the Covenant, when speaking of arbitration, had in view, among other things, procedure before the Permanent Court of International Justice. The word arbitration is not free from ambiguity, and it may certainly, at least if taken in its broadest sense, be wide enough to cover also such procedure. In order to avoid any possible doubt, however, a certain number of amendments to the relevant articles have been adopted by the organisms of the League, and these amendments have been ratified by a large number of states. Their object is to mention, besides arbitration, "judicial procedure," meaning procedure before the Permanent Court of International Justice. In reality, however, these amendments will only confirm an already existing state of things. It is therefore clear that the Court has its allotted place in the system of the League for the prevention of war. Indeed, the fact that it was considered necessary that the new Court should fit into that system has exercised the most far-reaching influence upon its organization and competency. The Covenant scheme for the maintenance of peace has not adopted the principle of obligatory judicial settlement of disputes between states—the principle known as that of compulsory jurisdiction. The only compulsory condition is that which provides for recourse to the mediation of the Council, when diplomacy has failed and recourse has not been had voluntarily to "arbitration." In order to avoid a departure from this system, those ultimately responsible for the framing of the Court's statute made recourse to the Court in principle dependent on an agreement between the parties in each particular case. In the League's system for the prevention of war the Court's rôle therefore, in the first place, is that of a court of arbitration, deriving, however, a specific and superior character from the fact that the parties have practically no influence on its composition, on its procedure, and on the obligation to pass judgment according to strict law. The

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provisions of the League system will be equally satisfied by recourse to an arbitral tribunal instituted by the parties for the particular case and governed by the conditions agreed on between them as to the procedure to be followed and the rules of law to be applied. Nevertheless, though the Covenant, fearing to place an undue strain on the spirit of co-operation of certain states, has refrained from proclaiming as between all members of the League the principle of compulsory jurisdiction, it cannot but favor the adoption of this principle by any states which are prepared for this. Accordingly, this principle has been applied by the treaties of peace in a certain number of cases, in such a way as to enable not only vanquished Powers to be summoned to appear before the Court by the victors, but also the victors to be arraigned by the vanquished. Furthermore, a special protocol is open for signature at the headquarters of the League at Geneva, accepting the Court's jurisdiction as compulsory between all the signatories. This system has moreover been extended to non-members of the League who can file with the Court a special declaration having a similar effect. In these respects, while keeping within the spirit of the Covenant, the Court goes farther toward the realization of its ideals than the Covenant itself, and to this extent it falls outside the system of the League.

IV

Under the preamble to the Covenant, the League further hopes to achieve international peace and security "by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and a scrupulous respect for treaty obligations in the dealings of organized peoples with one another." We have already seen that in the case of conflicts between states, the Covenant creates no obligation to have recourse to proceedings at law for the settlement of the dispute. The principles of the Covenant reproduced above would

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therefore seem to have a different bearing. It might be argued that they must mean, in the first place, that even non-judicial settlements of international disputes—more especially when the mediation of the Council is resorted to—are to be prepared bearing in mind the precepts of international law; and, in the second place, that these precepts are to be made so clear, so authoritative, and so generally known that a certain number of disputes will be automatically avoided, because the limits of the respective rights of the would-be litigants are too well defined to allow of any possible doubt, and therefore of any controversy. According to this conception of the League system the Court has an important place to fill, both as concerns the settlement and the prevention of conflicts.

Under Article 14 of the Covenant, the Court "may . . . . give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." This power of the Court must be considered in conjunction with the expression of principle just quoted from the preamble to the Covenant. It provides the means for the Council and for the Assembly to obtain the most authoritative statement possible as to what are on any given point of a dispute brought before those bodies "the understandings of international law"; thus enabling them to make their recommendations on the basis of such understandings. The Council has so far made a very extensive use of the possibility thus offered. It has even consented to give effect to requests addressed to it by individual states or by international organizations or bodies—e.g., the International Labor Office and the Conference of Ambassadors—to obtain from the Court, in the form of advisory opinions, findings as to the exact scope of treaties or other international arrangements or engagements. In this way, the Court has formed an essential part of the League's machinery for insuring "a scrupulous respect for all treaty obligations." Treaties are perhaps more often violated because their terms, by a certain

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lack of precision, seem to invite arbitrary interpretations and lax applications than for any other reason.

A tendency has also been displayed by the Council to accept the Court as the proper organism for the authoritative interpretation of the Covenant. This tendency, which has been welcomed by the Assembly and by public opinion, received its most eloquent expression in the intention which, without doubt, was that of the majority of the Council, to refer to the Court the questions of interpretation which arose in connection with the dispute regarding the Janina murders and the occupation of Corfu. Another course was eventually adopted. Will it create a precedent? Nobody knows; but it is certain that in the opinion of a majority of states—an opinion recently voiced within the Assembly—the interpretation of the Covenant should either belong to the states themselves or be submitted to a procedure in which every member of the League has an opportunity to state his view: the advisory procedure before the Court fulfils that condition. This procedure has been regulated by the Court itself, under powers expressly conferred on it by the statute. The salient feature is that even when giving advisory opinions, the Court considers itself as a judicial body and acts accordingly. It above all maintains the principles of the right of all those interested to be heard, and of publicity. In parenthesis it may be observed that there would seem to be no serious objection to the rendering by the Court of opinions on abstract "points"—the expression used by Article 14 of the Covenant—provided that a procedure on the lines just indicated can be supplied: this reservation excludes, among others, concrete cases disguised as theoretical questions. It follows that the right possessed by the Council and the Assembly to request the Court to give advisory opinions does not make the Court the "legal adviser" of the League, the essential characteristic of such an adviser being secrecy. The Court, even when rendering such opinions,

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limits itself to stating the law, and refrains from giving any advice. The formula adopted for the conclusions of the opinions is: "For these reasons, the Court is of opinion that . . . ." It further follows that the Court does not consider itself as entitled under the Covenant to give a decision in the form of an advisory opinion in cases where it would not have been able to deliver a judgment. If therefore the Council submits to the Court for an opinion a dispute or a point at issue between two states in such a form as to render an opinion tantamount to a judgment, the Court will feel reluctant to give its opinion if the question has not been submitted to the Council by the two parties; or if, supposing that it has been submitted by one of them only, the others have not either accepted the Court's jurisdiction as compulsory or otherwise agreed to the question being referred to the Court. This can be inferred from the reply to a recent request for an advisory opinion.

V

The advisory capacity of the Court has been dealt with at some length because it is apt to be misunderstood—and has indeed been misunderstood—precisely from the point of view of the Court's place within the system of the League of Nations. The judicial capacity, however, is and remains the more important of the two, even should, in future as in the past, the number of questions submitted for an advisory opinion be greater than that of cases referred to the Court for judgment.

Though, in effect, the Court has so arranged its procedure as to make its opinions also pure statements of law, the fact nevertheless remains that it is by stating in its judgments what are "the understandings of international law" and the nature and extent of treaty obligations assumed by two or more nations, that the Court most effectively contributes to the "maintenance of justice" and the "scrupulous respect" for the one and the other category of international precepts. Under the statute, the Court is expressly empowered to pass

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judgment on, among other matters, "any question of international law" and "the interpretation of a treaty." And the judgments are "final and without appeal," whereas, in theory at least, advisory opinions may be disregarded. This effect of the Court's judgments—the statement of rules of law—is in addition to their immediate result, which is the settlement of a given dispute—an aspect dealt with under a different head. Moreover, by stating what the law—general or particular, customary or conventional—is, the Court does more in the sense indicated by the preamble to the Covenant than to remove doubts in a particular case. It at the same time provides a firm basis for a reform or development of existing general international law and for "the reconsideration by members of the League of treaties which have become inapplicable," according to the expression of Article 19 of the Covenant. Such reform, development, or reconsideration can of course be undertaken only by diplomatic conferences or possibly by the Assembly: the Court is concerned only with existing law, not with the elaboration or recommendation of future rules of law.

VI

The above considerations may be summed up as follows: It has been possible to create the Permanent Court of International Justice, thanks to the existence of the League of Nations, as at present organized. The Court's statute was prepared by the League; but it now constitutes an independent international convention. This convention provides for certain administrative links between the Court and the League, e.g., as regards the renewal of the body of judges and the Court's finances. It is an open question whether these links could not be cut while maintaining the present organization of the Court. The Court, in so far as it derives its competence from an agreement between the parties to a dispute, forms part of the machinery adopted by the League for the prevention of war. In so far, on the other hand, as the Court's jurisdiction

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is compulsory, it is outside the system of the Covenant, though realizing one of the ideas upon which that instrument is based. In stating the existing law, general or particular, the Court contributes in several respects to the realization of another of these ideas. These statements of the law take the form either of judgments or advisory opinions, the latter of which are rendered at the request of the Council or of the Assembly of the League of Nations. The form established by the Court, however, for the giving of such opinions is distinctly calculated to safeguard the Court's judicial character and complete independence.

A. HAMMARSKJÖLD

THE HAGUE

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THE AIMS AND WORKING OF THE INTERNATIONAL LABOR ORGANIZATION

B. H. SUMNER

The Covenant of the League of Nations was designed primarily to aim at securing international peace and security and at preventing wars by reduction of armaments and by the the building up of alert and resolute public opinion determined to work for a changed spirit in the relations of states. At the same time, the Paris Peace Conference, when founding the League, was made to realize that an essential complement to politicial action and direct attempts to foster arbitration and peaceful negotiations was the removal of the social and industrial difficulties between states which so greatly handicap the progressive attainment of sound conditions of national life. Hence, the Treaties of Peace contain not only Part I, the Covenant, but also Part XIII, the "Labour Charter" as it has been styled, which establishes the International Labor Organization as a part of the organization of the League of Nations.

Part XIII contains in its preamble, Section I, and in Article 427 a full statement of the general aims and principles to be promoted and applied through the International Labor Organization. It is explicitly recognized that "the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance," and in the preamble there is a clear outline of the reasons necessitating permanent machinery for furthering their progress.

> Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based on social justice; and whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; . . . .

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whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries; the High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following. . . . .

Last September the Italian-Greek crisis, in another sphere of action of the League's, raised in an acute form the question whether the League stood for peace or for justice. Part XIII affirms without equivocation that the two are interdependent; in the long run peace depends on justice. I cannot here attempt any examination of what is the meaning of "social justice"; that involves a whole philosophy of life, or—which may be the same thing—a religion: though I fully admit the awkward consequences, I shall have to omit any such inquiry.

The difficulties of raising the general standards of life by international means are, in many respects, closely parallel to those encountered in the national sphere. Nations, in a similar manner to individual employers, are deterred from carrying out reforms because they fear that they may thereby be placed at a disadvantage in competing with other nations. Until the creation of the International Labor Organization, despite much good work steadily attempted, the main obstacle to any international regulation of labor conditions was the absence of regular machinery for efficient consultation, distribution of knowledge, and practical action; there was nothing but the slenderest means of securing some degree of simultaneous and relatively uniform progress. Approximate simultaneity is essential, but the idea of one strictly uniform standard is not considered feasible. It is thus, from one point of view, a minimum standard which the International Labor Organization is intended to assure, such an assurance permitting of further development of higher standards in the "advanced" countries. Naturally it is provided that no country shall be asked to lessen the protection afforded by its existing labor

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legislation. The opposition to rigid uniformity is indeed marked in the Treaty by the express recognition that "differences of climate, habits and customs, of economic opportunity and industrial tradition" absolutely require that all such special circumstances be fully taken into account. It may be remarked that world economic interdependence alone would make impracticable any schemes of merely regional organization to co-ordinate labor legislation which did not also allow for the existence of a world-organization such as that created at Paris. Part XIII of the Treaties enunciates the guiding principle that labor should not be regarded merely as commodity or article of commerce, and formulates certain other principles and methods for regulating labor conditions as being of particularly urgent importance. Among these we may specially note: the right of association; "the adoption of an eight hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained"; a weekly rest day, to be Sunday where practicable; "the abolition of child labor and the imposition of such limitations on the labor of young persons as shall permit the continuation of their education and assure their proper physical development"; the protection of women's labor; the protection and equitable treatment of emigrants; the prevention of unemployment; sickness, accident, and old age insurance; industrial hygiene; the organization of vocational and technical education; the provision by each state of a system of inspection, in which women should take part. It is to the application of these methods and principles that the main part of the work of the Labor Organization has been devoted, and the principal means employed is the new procedure of draft conventions and recommendations. Draft conventions and recommendations are required to be passed by a majority of two-thirds of the votes cast by the delegates at the annual meetings of the International Labor Conference. I shall say something of the composition and functioning of the Conference later on. Recommendations are more or

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less general in form, do not go into details, and are intended to serve as a means of preparing the ground for subsequent detailed treatment of the same problem by a draft convention, and of promoting action in the different states along the same general lines as regards a particular labor question on which there is insufficient experience to allow of it being the subject of international agreement as to more precise methods of dealing with it. Draft conventions, on the other hand, consist of detailed provisions, very much in the manner of any labor legislation presented to the House of Commons. In their framing the Conference is bound to have due regard for those countries "in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different." In passing I might note that the working of the Conference has shown that the very fullest regard is in practice paid to the existence of these differences, most strikingly in the case of Asiatic countries.

Draft conventions and recommendations if passed by the Conference have to be brought by the governments of the member states before "the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action." This is an obligation for all members of the Organization whether their delegate at the Conferences voted for or against any particular draft convention or recommendation. What the exact meaning of the words "authority or authorities within whose competence the matter lies" has been the subject of considerable dispute—and, in the House of Commons, of keen controversy. What the provision is intended to effect is certainly the opportunity for Parliaments, and thus indirectly the general public, to discuss and consider each draft convention, whether the government thinks that it should be ratified or not. For it must be emphasized that the only initial obligation on a government is to submit draft conventions and recommendations to the compe-

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tent authorities. Of course, if a government has at the Conference voted in favor of a draft convention, it places itself in a very awkward situation if it does not then proceed to ratification—as for instance, the British government, which voted in favor of the Washington Eight Hours draft convention, but has never ratified it; thereby profoundly influencing the action of other leading industrial states, which have pointed to the British non-ratification as a reason for their own non-ratification. This question, as is well known, has caused bitter recrimination, but the fundamental point at issue concerns moral obligation, not legal obligation; the action of the British government does not constitute an infringement of the Treaty.

Once a state has ratified a convention, it then assumes certain further obligations. It undertakes to put the whole convention into full operation, and if it does not do so, or is believed not to be doing so, formal, public complaint may be lodged against it in accordance with a procedure of "sanctions" provided for in the Treaty. It may be doubted how far the "sanctions" envisaged would be of practical effect, but I do not propose to examine them here; the real point is publicity. Up to the present no such formal complaint has been put forward as to the non-observance by a member of a convention which it has ratified, and the last four years have shown only too clearly that members are indeed far from considering that draft conventions can lightly be ratified or that they are matters of little consequence. The work of applying the aims and principles of the International Labor Organization rests to a large extent on its new machinery of draft conventions and recommendations. Yet, though the procedure is new, the underlying idea is not; for all this part of the constructive work of the Organization is based on the belief that the principal means of securing and maintaining "fair and humane conditions of labour for men, and women, and children" is by way of legislation—national

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legislation. The International Labor Conference is in no sense a super-parliament passing laws and imposing, or trying to impose, them on unwilling states. The Conference prepares the content of legislation, but it rests with each country in the last resort to decide whether it will bind itself to adopt in practice the results presented to it by the Conference.

It is this side of the work of the Labor Organization which has, rightly, attracted most attention, partly for the obvious reason that the number of ratifications can be pointed to as proofs of success—or failure. Up to date sixteen draft conventions have been adopted by the Conference and one hundred and twelve ratifications accorded.[1] It is undeniable that in many quarters these results are considered disappointing and unconvincing. The number of ratifications is not by itself, however, a fair token of the "legislative success" of the Organization or of the impetus given by it to national improvements in labor legislation. Much progress has been made in almost all countries even though it may not fit in within the exact framework of particular draft conventions. The new Japanese Factory Act, for example, has been strongly influenced by the activities of the International Labor Organization. Over one hundred bills recommending ratification have been brought by the various national authorities before their respective parliaments. A further vast mass of legislation in connection with the draft conventions or recommendations is in preparation, awaiting or under discussion in parliaments. In fact, attacks and criticisms are directed not only against the opposition of some governments or employers to ratification, but also, from different quarters, against the over-great number and too hurried passing of draft conventions and recommendations—even against the whole of this new machinery for labor legislation. It is, of course, from the employers and workers that come the more or less open attacks

[1] Including twelve ratifications of the Berne Convention on white phosphorus in matches received since October, 1919.

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or outspoken complaints; governments have, for obvious reasons, confined themselves to "friendly criticism," the raising of legal or constitutional difficulties, ultra-cautious circumspection, or stolid and remote indifference: I do not mean for a moment to imply that such is the regular attitude of governments; the figures just mentioned would immediately refute such a suggestion; it is simply that on particular questions in regard to which a government does not agree with the International Labor Office its attitude tends to take the forms I mentioned.

The most potent reasons for the chief difficulties of the International Labor Organization are to be found, not in any rooted disapprobation of the institution as such, but in the effects of the military, political, and economic crises of the last ten years. I need not emphasize the consequences of the post-war chaos and uncertainties; they are ubiquitous, and extremely damaging to the orderly advance of co-ordinated schemes of legislative reform in the industrial sphere. There are, however, apart from this, a variety of considerations to which it may be well to call attention in regard to the whole question of legislation.

1. Our modern conception of legislation, and particularly of labor legislation, is essentially what may be called a West European conception. Where custom and tradition are still the ruling habit of mind and the predominant factor in the relations of groups of men, legislation plays at best but a secondary rôle.

2. Modern legislation is legislation of the sovereign state; but the state is beginning less and less to be regarded as the only organized community, and more and more as merely one organized association, of a specially inclusive and important kind, over against or amidst other organized associations. The day of voluntary agreements is not over and in proportion as this attitude to the state becomes strengthened so we may expect the increase of non-state methods of regulating labor conditions.

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3. Modern legislation, and again particularly labor legislation, is both exceedingly complex and also to a very large extent dependent for its efficacy on the detailed elaboration of the means to carry it out. To take the last point first. In all countries there is some gap between legislation on paper and its actual application; in many countries the gap is indisputably, sometimes even farcically, wide. As our own English experience of the first half of the nineteenth century has abundantly shown, the value of labor legislation depends in practice on factory inspection. New countries, or countries which are now developing industrially along the lines of European experience of the last fifty years, must be enabled to build up a sound working system of inspection if their labor legislation is to be accounted as really on a parity with that of, say, England. This vital problem of factory inspection has from the first been given close attention by the Labor Organization, and now the fifth session of the Conference, which is being held at Geneva this October, is to be entirely devoted to the subject of the general principles of factory inspection.

4. The complexity and range of the questions dealt with in labor legislation involve obviously the utmost care and skill in preparation; consequently, a considerable amount of time also. The working of the International Labor Conference has shown that there was some tendency at the very start to go too fast and that fuller examination of some points would have been advisable. This was quickly perceived and the Conference has been increasingly chary of anything in the nature of hasty action. The International Labor Office has made great efforts to perform fully the necessary preparatory work for the Conference, but the question has indeed been officially raised by the Swedish government as to whether the method of draft conventions embodying detailed particulars of application is feasible, in view of the immense task involved in collecting and making available the necessary preliminary

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information and in view of the great variety of conditions prevailing in the different countries. This question depends to a large extent on the amount of time and work that can be expended on the preparation of draft conventions, and on the experience gained by way of recommendations.

In this connection the fourth session of the Conference, held in October, 1922, was of great interest. The Swiss government had proposed that, in order to prevent the overburdening of parliaments and government departments with draft conventions and recommendations, the Conference should meet once in two years instead of annually. This, apart from other objections, would require a revision of the Treaty—a slow and difficult process. The Conference agreed that means should be found for the limitation of the number of draft conventions and recommendations, but suggested a different method from that of alteration of the Treaty. The procedure which was proposed, and which is now being further examined by the Governing Body, consists in the Conference continuing to meet annually, but holding alternate sessions of preparation and decision. A judicious application of this idea might certainly be of much utility in removing many of the difficulties which have been encountered as to ratification of draft conventions. It should be remarked that, in any case, the agenda for the session of the Conference this October has been so drawn up as to include no subjects on which it is proposed to adopt draft conventions at once.

5. Finally, legislation based on conventions is of a peculiarly rigid type. Ratification of a convention by a country involves that country in a treaty obligation to pass, or keep on the statute book, definite, minimum legislation, and to enforce it: no legislation that provides less than that minimum can afterward be passed unless the convention is revised. Part XIII does not lay down any procedure for the revision, or for the non-contentious interpretation, of conventions. It is true that each draft convention contains an article to the effect that the

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Governing Body shall at least once in ten years present a report to the Conference on the working of the particular convention and shall consider the desirability of its being altered. Still the fact remains that the rigidity and bindingness of conventions when ratified are proving a serious obstacle to ratifications. The whole question of the institution of a procedure for the possible amendment of conventions has been under discussion for eighteen months or so; the legal and constitutional difficulties involved are of great complexity; hurried action would clearly do much harm: there certainly has been no hurried action here!

I have dealt at some length with this question of draft conventions and labor legislation, for the public interest in the International Labor Organization has been largely concentrated on it. Given the extremely unfavorable circumstances of the past four years and bearing in mind the scope and prerequisites of all legislation, the wonder is not that more has not been accomplished by the initial activities of the Organization, but, on the contrary, that so much has been achieved and set on foot. Despite so many difficulties, the work of the Organization is entirely beyond any comparison with what little was done in the same sphere before the war.

We have seen that, broadly speaking, the aim of the International Labor Organization is the organized co-operation of nations in working toward social justice, and that a main part of the Organization's concrete efforts toward attaining this end takes the form of stimulating labor legislation. Distinct from its direct work in this field there is another fundamental, concrete aim in the creation of the Organization. In the words of Article 396 of the Treaty, "the functions of the International Labor Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour. . . . ." The chilly language of the Treaty hardly does justice to the paramount importance of the nature of

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this work. The International Labor Office does not merely act as an invaluable, permanent secretariat to the Conference and the Governing Body: it is also, as it were, a "knowledge shop"—and already much more than a potential one. In all spheres of interest which are not confined to particular countries the last fifty years have seen the strong upgrowth of international institutions, most of them due to private initiative, having as their object the pooling and co-ordination of knowledge and experience—international law, maritime questions, agriculture, hygiene, cotton growers, members of parliaments, scientists, the Red Cross. I need not multiply instances. The war killed some, but only some, and there has indeed been some danger of overlapping and duplication of work. (The danger has by now been, on the whole, satisfactorily met.) To some extent, also, the various international federations of workers serve the same end; and these have greatly multiplied since the war. It is above all in financial, economic, and industrial problems that the interdependence of the different parts of the world renders imperative machinery for international clearing-houses of knowledge. Much can be done by publications, and here the International Labor Office, after considerable, though inevitable, difficulties at the start, is doing excellent work. Perhaps, though, of even greater value is the purpose which it fulfils in dealing with specific inquiries from governments, institutions, or individuals. These requests for information or guidance range from American employers and Finnish officials to the British government and branches of the League of Nations' Union. The immense assistance which the International Labor Office can lend to the new states of Eastern Europe is fully acknowledged and can scarcely be overemphasized. The Indian and Japanese governments, to cite further examples, make much use of the Office in this respect, and the latter has for two years past had a special mission in Geneva to insure the closest contact with the Office. I cannot, however,

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attempt here to do more than in general terms to lay the fullest stress on the importance of the work being performed by the Labor Office in this sphere.

From one point of view, the other institutions of the Organization also contribute to this end. In particular, an increasing share in this work is now being done by the various commissions set up under the control of the Conference and the Governing Body, e.g., on agriculture, maritime questions, industrial hygiene, anthrax, emigration, statistics, war disablement. These commissions are essentially meetings of experts, but, with a few exceptions, they are also formed on the same root principle as the Conference and the Governing Body—the principle of bringing together government, employers', and workers' representatives so that from their common deliberations sound working proposals can be formulated, based on the special knowledge thus made available and on the special requirements thus brought to light. The value and further possibilities of this working through commissions have already been apparent, although not much public notice has been taken of it. The disablement commission may be briefly cited as a good example. It was formed at the request of the chief organizations of disabled men, and is composed of their leaders and of the heads of the government departments concerned. Thirteen countries, including the dominions, Germany, Austria, and Hungary, took part in the last meeting of the commission at the beginning of August, 1923. Prosthesis, vocational retraining, and the general problem of finding employment for disabled men have been the main subjects examined. It is difficult to believe that without the facilities afforded by the International Labor Office this comparative examination of methods and results and this interchange of experience would have been adequately forthcoming on anything like so extensive a scale.

If the first of the more concrete aims of the International Labor Organization may be termed the attempt to work

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toward social justice by means of labor legislation, and if its second may be termed the attempt to do so by the organized sharing of experience, its third may be seen exemplified in the composition of the Conference and the Governing Body. First, one word as to membership as distinct from the method of representation. Membership of the League carries with it *ipso facto* membership of the International Labor Organization, but, in virtue of special arrangements made at the Paris Peace Conference, the latter has from the first included Germany. The importance of this inclusion scarcely stands in need of emphasis. In spite of all her internal and political crises, Germany has played a noticeable part in the work of the Organization and, as might be expected, her interest in the Labor Office as a center of information and knowledge has been very prominent. There are now in all fifty-four member states of the Labor Organization, including since the last meeting of the Assembly the Irish Free State. The United States is not, of course, a member—a most outstanding disadvantage. I shall not, however, say anything on this question here, except to point out that the United States government has shown itself ready to take part officially in certain technical commissions, such as the anthrax commission, just as it has done in the case of certain other institutions of the League, e.g., the opium commission.

The International Labor Conference is composed of four delegates from each of the member states, viz., two government delegates, one employers' delegate, and one workers' delegate. Each delegate votes individually. This is a principle entirely new to international bodies which include government representatives. The employers' and workers' delegates from each state are, strictly speaking, nominated by their respective governments, but the governments undertake in so doing that the delegates shall be "chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or work people, as the

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case may be, in their respective countries." This may be said in practice to mean that the employers and workers respectively choose their own representatives, and in the majority of countries the procedure has worked quite smoothly. In certain countries, however, e.g., the Netherlands, Finland, South Africa, Poland, Japan, difficulties have arisen, due either to rivalry between different organizations or to the lack of development of such organizations. Still the essential fact remains that the Conference is a tripartite body based on the joint co-operation of governments, employers, and workers, and that the fundamental line of division is not between nations, but between these three groups. Further, representation for particular interests or organizations, e.g., co-operative societies, and provision for additional expert knowledge are supplied in the form of technical advisers. Each delegate may have two such advisers for each item on the agenda of the Conference. They are appointed in the same manner as the delegates. An adviser has not the right to speak or vote except when duly empowered by the delegate in question to act in the stead of him. Practice has shown that this system of additional representation by way of advisers is of very great value, and that it does not in reality lead to the Conference becoming an impossibly large body. Women can be, and are, appointed as delegates or advisers, and they have taken an important share in the work of the Conference.

The composition of the Governing Body rests on the same basic principle: twenty-four members, twelve appointed by governments, six by the employers' group at the Conference, and six by the workers' group. The prospective changes in its composition do not touch the main principle, but will only give wider representation by an increase of its total numbers to thirty-two, leaving the proportions between the three groups unchanged. Thus, in the Conference and in the Governing Body, governments, employers, and workers are brought together in order, by contact with their respective views and

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interests, so to understand each other as to take satisfactory decisions on the question before them. The initial difficulty of language, surmountable up to a certain point with comparative ease, remains a most real one, for meanings can often be understood, not by any translation, but only by a habit of association: considerable continuity of representation, for this and other (psychological and business) reasons has been found to be a most necessary element in the Conference and Governing Body. Apart from such language difficulties, it is inevitable that in bodies of this kind contact may lead sometimes not to understanding, but rather to acrimony; that no decision may be reached; or that the decision may be unsatisfactory to some. These are unpleasant consequences, but they must be frankly admitted. Disputes cannot fail to arise on certain questions and at certain times. Particular cases of disagreement do not, however, necessarily prove the principle to be unworkable: temporary failures are apt to loom excessively large; four years to be taken as forty.

Experience has gradually shown that, within any one country, the building up of regular, organized relations between employers and workers has led not simply to mistrust and conflicts, but far more to better understandings and to the joint elaboration, partly in concert with governments, of practical steps toward reconciling those of their respective interests which otherwise continue to clash bitterly. Trade unions may be in varying degrees responsible for certain industrial difficulties, but there can be no doubt that on the whole trade unionism has been of enormous benefit, not merely to the workers themselves, but also as regards the whole problem of the regulation of industrial conditions. It is open to speculation how much more would not have been gained if employers' organizations had developed to the same extent.

In the International Labor Organization the analogy of national experience is being applied internationally. Trade unionism has been for long organized internationally. Recently

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an international federation of employers has for the first time been formed—largely the result of the working of the Labor Organization, a fact of striking significance. The whole basis of the Organization is the co-operation of governments, employers, and workers; such co-operation is impossible without stable governments and without, at the least, some degree of organization among employers and workers. Thus, the Organization stands for political stability and industrial organization.

Since its foundation one or the other, and in some cases both, of these conditions have been most evidently lacking in many countries. The general situation in Central and Eastern Europe has naturally been the cause of immense difficulties. Outside Europe in India, in Japan, in the Latin-American countries, it is the fact that industrial organization has but slowly developed which is the fundamental reason why the International Labor Organization has appeared to some to be an inter-European institution rather than a genuinely international one. (It is true that the non-participation of the United States has also contributed to this feeling.) The same fact explains largely why the governments have appeared as much the most predominant factor in the working of the Conference. Critics point to the Governing Body with only three regular extra-European members (the Japanese and Canadian government representatives, and the Canadian workers' representative) out of a total of twenty-four. They point to the Conference with Latin-American states sending government delegates without sending employers' and workers' delegates, with the Japanese workers' delegate a continual matter of dispute. They could point to the choas of China and her four hundred millions untouched by the Labor Organization. These criticisms have a great deal of weight, but where they fail is that they do not allow for the fact that the necessity for the existence of the Organization is the achieved degree of interdependence of economic and labor

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conditions throughout the world, that the experience gained in the regulated development of these conditions is in the main, roughly, European, and that the very object of the Organization's method of work is to encourage the development in extra-European countries of forms of organization similar in aim to those which have been successfully tested in Europe. Even already there are signs of change. As previously mentioned, the Governing Body is to be enlarged, specifically in order to allow more adequate extra-European representation. Industrial organization is making progress, e.g., in Chile. The position of the Argentine vis-à-vis the League is changed. Cuba and Brazil are taking a more active interest in the Labor Organization. The first steps toward practical action by the Pekin government have been recorded. In addition, stress should be laid in this connection on the very active participation of India since the very beginning of the Organization. Much of the lead and most of the guidance must continue to come from those countries with the greatest experience in the field of the progressive improvement of labor conditions. A vital part of this experience is the psychological habituation to methods of joint deliberation between differing, and partially conflicting, interest. The institutions of the International Labor Organization are founded on the recognition of this imponderable but all-important factor. The state, government, bureaucracy, are not everything; nor is the free play of individual skill and enterprise; nor are the claims and grievances of sectional interest. It is difficult, but it is possible, round the table, face to face, for governments, employers, and workers to understand each other's points of view and to hammer out results. It is difficult; but under modern conditions, in the long run, successful results depend on this principle being somehow applied. In very many cases these results, however, are impossible of attainment, unless full account is taken of conditions in other countries and international reactions. Hence the necessity for an international institution

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for fully preparing the ground for a simultaneous improvement in labor legislation, for placing at the disposal of one and all the collective experience of mankind, and for stimulating within each national community by practice and example methods of proceeding by the joint co-operative efforts of all organized interests concerned. These are the three primary functions of the International Labor Organization in pursuance of the aim of the League of Nations—the realizing of international peace and justice. Despite the immense difficulties in all parts of the world a great beginning has been made.

B. H. SUMNER

ALL SOULS, OXFORD

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A CRITIQUE OF MELIORISM

DANIEL SOMMER ROBINSON

Never were cynical pessimism and generous optimism more indissolubly wedded than in that interesting philosophy of life known as meliorism. For in the same breath this theory scathingly condemns the existing world as "a sorry state of affairs," and affirms with confident assurance the ability of human intelligence to make it over. With unquestioning, if not naïve and childlike faith, its advocates have adopted the practical motto: "Let us make a better world!" Meliorism is militant. Abetted by the propaganda of the numerous humanitarian organizations which naturally sprang up during and immediately following the world-war, it has won to its support representatives in almost every walk of life. Some of these meliorists are strongly intrenched in academic, ecclesiastical, political, social, and literary positions, and they use effectively the privileges of their position in promulgating this new and, to their mind, saving philosophy of life. While some descry, others prophesy; while some attack opposing philosophies, others attempt reconstructions; while some seek to undermine nationalism and industrialism, others labor for a higher internationalism and the democratization of industry. And within certain limits meliorism is tolerant. It seeks to interweave into a single group all who believe in human progress. It succors the lamblike progressive and the lionlike radical, and invites them to co-operate in the making of a new social order. In short, meliorism is at once a militant and cocksure social philosophy, and a practical and aggressive social program.

Controversial attacks directed against the practical program of meliorism consume the time and energy of many

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doughty champions of the existing social order, but they break their lances in vain. For on the whole the practical activities and preachments of meliorism are commendable. What is needed is less controversial propaganda and more radical criticism of the underlying social philosophy. One may be sympathetic with many of meliorism's practical ideas for improving social conditions, and yet recognize that they are based upon a logically defective social philosophy. And, on the other hand, one may question the cynical pessimism and repudiate the generous optimism of meliorism, and yet not necessarily be an arch-conservative either in theory or in practice. Any sound social philosophy must begin by accepting the irremovable fact that human intelligence and all human accomplishments are dependent upon and fall within an infinite, non-human reality. Such a reality, whether interpreted in the sense of the *infinite duration* or *space-time matrix* of the new realism, or as the *immanent absolute* of objective idealism, or in the still more friendly sense of the *personal God* of theistic idealism, must be postulated as the enabling act for every social program of human meliorization. This reality meliorism will not acknowledge. It irreverently slaps the universe in the face and boastfully turns to the stupendous task of making a better through the sole instrumentality of creative human intelligence.

One way of dealing with the social philosophy of meliorism is to trace a resemblance between it and some one of the other historical attempts to solve the problem of evil, now generally out of favor. For it certainly does somewhat discredit a theory which boasts of its originality to show that it is at bottom only a re-wording of an antiquated doctrine. Now the optimistic formula: "This is the best of all possible worlds," first expounded in the *Théodicée* of Leibniz and satirized in the *Candide* of Voltaire, is one of the most famous of these traditional attempts. And no less a philosopher than Bernard Bosanquet has suggested that meliorism is in essence identical

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with the dictum of Leibniz. To be sure William James's classic statement of the doctrine was first presented in the same course of lectures in which he ridiculed Leibniz' doctrine as "superficiality incarnate," "the product of a shallow wig-pated age." But James is certainly not far from the view that this is the best of all possible worlds when he himself writes:

> Suppose that the world's author put the case to you before creation, saying: "I am going to make a world not certain to be saved, a world the perfection of which shall be conditional merely, the condition being that each several agent does its own level best. I offer you the chance of taking part in such a world. Its safety, you see, is unwarranted. It is a real adventure, with real danger, yet it may win through. It is a social scheme of co-operative work genuinely to be done. Will you join the procession? Will you trust yourself and trust the other agents enough to face the risk?" . . . . There is a healthy minded buoyancy in most of us which such a universe would exactly fit. We would therefore accept the offer—"*Top! und schlag auf schlag!*" It would be just like the world we practically live in; and loyalty to our old nurse Nature would forbid us to say no. The world proposed would seem "rational" to us in the most living way.[1]

Consequently there is much justification for Bosanquet's statement:

> It just illustrates the difference between looking at philosophy from without and working at it from within, that after some hundreds of pages of discussion James finds himself, in essence, affirming the view the acceptance of which by Leibniz he began by treating with contempt.[2]

There are, however, two reasons why I prefer not to follow up this historical method of criticizing meliorism. In the first place, James interprets Leibniz to mean by the phrase "this is the best of all possible worlds" that this actual finite existence of ours is an absolutely perfect world, as is shown by his ending his quotation from Leibniz with the words "God has made all things harmonious in perfection," whereas Bosan-

[1] *Pragmatism*, pp. 290 f.

[2] *Principle of Individuality and Value*, p. 11 (note).

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quet interprets him to mean that this finite world is not now perfect, but has the germ of meliorization within because it is rooted in an infinite perfection. We are thus confronted with the problem of correctly interpreting Leibniz' famous dictum, and, even though I had the ability to make such an interpretation, to do so would really be too much of a digression from present-day meliorism. For, in the second place, meliorism has developed far beyond James's conception of it. No one could seriously object to his cursory and harmless presentation, since he was quite obviously speaking of making a better world in the limited sense of improving our own social environment. But it is quite different when the theory is generalized, as it is by contemporary meliorists.

> Meliorism is the belief that the specific conditions which exist at one moment, be they comparatively bad or comparatively good, in any event may be bettered. It encourages intelligence to study the positive means of good and the obstructions to their realization, and to put forth endeavor for the improvement of conditions.[1]

This passage shows that meliorism has become a metaphysic. The other non-human powers which James believed would aid men in making the world better are dropped out. The creator, whom James presupposed, is gone. Even "our old nurse Nature" has become an impotent handmaiden. There is nothing left but a universal human intelligence engaged in the Herculean task of throwing off worlds or sets of specific conditions moment by moment, much as M. Bergson's *élan vitál* throws off matter, only each succeeding world or set of specific conditions is assumed to be better than its next predecessor. Now this developed conception of meliorism is very far removed from Leibnitzian and Jamesian theism, in which this created world is but one among an infinite number that were possible in the mind of God when he chose to give existence only to it. Consequently a critique of meliorism would hardly be furthered by tracing the doctrine to its origin.

[1] John Dewey, *Reconstruction in Philosophy*, p. 178.

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Nor can it be met by the pragmatic method of tracing its practical consequences. To be sure one might point out that it is logically forced to demand a continuous radical reconstruction of social forms and institutions. To some this would condemn the theory as placing humanity in the insoluble practical dilemma of having perpetually to strive for a settled condition of society while realizing that such a settled condition is utterly impossible. But to the meliorist this is precisely what is desired. The very idea of a settled or established social order is repugnant to him. Hence such an approach would not meet meliorism on its own ground. Moreover, even those who would insist most on the practical advantage of having some things settled, welcome and insist upon a dynamic theory of society. This is the half-truth in meliorism which the critic who knows what he is about will not attack.

It would seem, then, that a sound critique of meliorism must be analytical and dialectical. It must inquire what the inherent implications of the theory are and whether they are logically consistent. Precisely what does meliorism mean by a better world? And what is the theory of value which it uses to determine this betterness? Here is the crux of the matter. If in the answers to these questions, particularly to the last, there are to be found serious logical defects, meliorism will stand condemned on its own ground. And standing condemned it must either pass out of philosophy into the limbo of popular jargon, or remedy the defects by constructing an original and logically sound theory of value. And in either case philosophy will have gained, on the one hand by being freed from a notorious pretender and on the other hand by an enrichment of its real content.[1]

Whoever seeks to make an analysis of contemporary meliorism is at once confronted with the interesting fact that two distinct types have to be differentiated. One of these I shall

[1] Bosanquet has used the method of dealing with meliorism here suggested in a few very significant paragraphs of the Preface to the second edition of the *Philosophical Theory of the State.*

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designate *psycho-dogmatic meliorism*, because it is uncritical as regards theory of value, and operates primarily with the psychological conceptions of satisfying and of harmonizing human desires and interests. The other I shall call *logico-critical meliorism*, because it is critical of all existing theories of value, and claims to have developed an original theory based upon the new logic of relations. The justification for this differentiation must be found in the sequel. But let me remark in passing that the fact that there are two distinct types of meliorism is eloquent testimony that the whole doctrine is in a very liquid condition, and far from possessing the logical coherence which every social philosophy must win for itself before it can claim a standing among the truths of philosophy.

When I say that psycho-dogmatic meliorism is uncritical as regards theory of value I mean that it has no unique and unequivocal theory of what value really is. The writings of this group of meliorists show very little knowledge of the highly technical and significant investigations which have been published in this field since the movement was initiated in the early nineties by the appearance of Meinong's *Werttheorie*. One has to read between the lines and seek for the background of their expressed ideas in order to discover just what they mean by value. And then one finds that they really do not know what they mean. For they operate with two entirely distinct theories of value without fully comprehending the implications of either, and without satisfactorily amalgamating and reconciling them into a third theory. One of these is the realistic, commonly called the *relational theory*, and the other is the Platonic or *harmony theory* of value.

In this country the relational theory is sponsored and has been most consequentially developed by the new realists. The psycho-dogmatic meliorists have taken it over from them. According to this theory, value is a relation between a desire on the one hand and something which satisfies that desire on the other hand. When one speaks of the object which satisfies

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as the value, he has lapsed into popular speech and is not scientifically accurate. The value is not the object, but the object as standing in the relation of satisfying to some desire. When the object, whatsoever it may be, is out of that relation the value disappears. Hence all values are relative. They endure only for the length of time that a desire stands in the relation of being satisfied by an object. Take the satisfying relationship away and you destroy the value. Thwart a desire before it gets satisfied and you have negative value. According to this view the rôle of intelligence is twofold. It devises means for the satisfaction of the organism's wants. And it adjusts various wants. But in so doing it constitutes no values. It may seek to bring desires into some kind of accord, but if so that is because there is a desire for harmony which makes use of intelligence in its pursuit of satisfaction. Only to desire or to take an affective-volitional attitude toward an object is to value it. *Intelligence never creates values*—this is a cardinal principle of the relational theory of value.

> When all the knowledge is got that can be got, when we have obtained as clear vision as with our human limitations we can obtain, still we shall find ourselves passively contemplating a wan and colorless future unless our desires rise up to seize some envisaged possibility and invest it with the charm of the ideal.[1]

These words of Professor McGilvary show clearly how *knowing or the cognitive relation* is excluded from *valuing* in realistic theory of value. With James realism proclaims that "the essence of good is simply to satisfy demand."[2]

Now the psycho-dogmatic meliorists, among whom Professors Bode and Otto may be selected as typical, accept this theory that a value is created by the satisfaction of any desire. Thus, in his criticism of Professor McGilvary, Professor Otto writes:

> The purpose of the discussion which follows is in no sense to challenge the relativity of morality. On that point I am glad to express my

[1] *Hibbert Journal*, XIV, 62. [2] *Will to Believe*, p. 201.

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complete accord with Professor McGilvary. I am the more happy to do so since it was Professor McGilvary who, as my first teacher, first introduced me to the conception. For this, which I now regard as the most pregnant idea gained in my university course, I shall always be deeply indebted to him.[1]

And later he interprets this relativity to mean that "morality is not formal, abstract, unrelated to the concrete wants and purposes of men," which shows, when positively construed, that he accepts the theory that moral value is a relation between concrete wants and desires and what satisfies them. And Professor Bode shows that he accepts this theory of value in his definition of *intrinsic value.*

When we set out to realize an aim, we may do so because the end that is sought has a value on its own account, it is something that is directly appreciated. Men seek fame, wealth, power, comfort, luxury, because these things have an immediate value, which requires no explanation or justification. As James remarks: "Not one man in a billion, when taking his dinner, ever thinks of utility. He eats because the food tastes good and makes him want more."[2]

In other words, as the quotation from James shows, intrinsic value is created whenever an immediate want or desire is satisfied.

Yet both of these meliorists refuse to accept the exclusion of intelligence from valuing. They want the satisfaction of desire to be constitutive of value, but they also want the satisfaction of intelligence to be constitutive of value. Thus Otto complains that McGilvary substitutes one form of absolutism for another.

In place of an eternal, immutable ethical truth we now have an indefinite number of impulses, aims, purposes, ideals, each absolute in its own right. If they are relative to some accepted scheme of life, if they were subservient to a good set up after a survey of the situation in which they arose, then an adjustment might be made in harmony with this scheme or good.

[1] *International Journal of Ethics*, XXXI, 5. All other quotations from Otto are from this article.

[2] *Fundamentals of Education*, p. 22.

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In other words, intelligence, in making a survey of the situation, creates a good which is of a higher order than that created by the mere satisfaction of desire. The two value-orders are even set in opposition to each other.

> Something in the face of aspiring humanity has flowered, as far as our human knowledge goes, in human intelligence, in man's ability to imagine a fairer life than the immediately experienced one and in his skill gradually to translate the vision into fact.

Here the skill of human intelligence is definitely set down as the creator of highest value, "fairer" than "the immediately experienced," which can only mean better than any value created in the satisfaction of an immediate want. Immediate satisfactions are admittedly values, but the vision which human intelligence imagines, and then gradually actualizes, is a far, far higher value. Bode also writes of "examining motives and aims in the light of the larger good," thereby making intelligence "free and responsible," and making possible the "vision of a world in which men may dwell together in the freedom and equality of common devotion to ideal ends."[1] Now all of this shows that there is working here another theory of value alongside of the relational theory.

What is this good set up after a survey of the situation? Bode answers that it is the dwelling together of all desires "in the freedom and equality of common devotion to ideal ends," it is a "completely socialized world." And how is it to be attained? By an adjustment and harmonization of desires, which process shall even go the limit of eliminating such desires as refuse to be adjusted, of modifying others, and of creating whatever new desires are needed to effect a complete adjustment. Here, then, is the old friend of students of ethics which first came into the science in the Dialogues of Plato, *the harmony theory of value.* But it is our old friend in a new dress. For this harmonization is not to be effected by an individual rational soul nor by the functioning in human

[1] *International Journal of Ethics*, XXIX, 404.

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experience of a transcendent God or transcendental idea of good. It is to be effected by human intelligence in the technical sense in which the word is used by pragmatists. Desires are multitudinous atoms, each after its own satisfaction. Intelligence is one, the same in you and in me, an all pervading *social intelligence.* The pressure of this onward rushing social intelligence is the creative force which welds crude atomic desires into a harmonious whole. The satisfaction of this social intelligence will create a fairer value than the satisfactions of purely individual wants, however numerous they may be.

In the thinking of these meliorists, then, there operate two distinct theories of value, one that value is constituted by the satisfaction of any desire, the other that value is constituted by the harmonization or adjustment of desires. According to the first theory, value is a matter of quantity, the larger the number of desires which are satisfied the greater the amount of value. According to the second theory, value is a matter of degree of adjustment, the more completely existing desires are harmonized the more value. Thus two better worlds are in the premises. One a world in which a larger number of desires are satisfied and a fewer number thwarted than in this world. The other a world in which adjustments are more perfect than in this world. The goal of the first would be a condition in which all desires are satisfied and none thwarted. The goal of the second would be a state in which all desires are completely harmonized. Thus in one place Otto says: "The end we seek is the completest life for every human being." Here he is evidently using the relational theory of value, the largest possible number of satisfied desires for the largest possible number of human beings, would evidently be the completest life for every human being. And then he at once shifts to the harmony theory, although still retaining the relational theory, when he says that the "end is such an adjustment of conflicting ideals as will secure the greatest proportionate satisfaction of the ideals involved." Read here desires for

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ideals, which is in accord with Otto's usage, and you have both theories mixed up together. Then a little farther on he writes that the end is "something to be created out of the impulses and desires of men through the application of creative intelligence to the conflicts of ideals." And this is equivalent again to Bode's idea of a completely socialized world. In other words, the harmony theory of value, adapted to pragmatism, is here at work.

It is quite obvious that these meliorists make the tacit assumption that an increase in the degree of adjustment among conflicting desires will carry with it the satisfaction of a larger number of desires. But would "a completely socialized world" be one in which the largest possible number of desires would be satisfied and the fewest possible thwarted? If not, these writers equivocate when they assume these two ends to be identical. This, I think, is the first logical defect in psychodogmatic meliorism. Operating with two distinct theories of value it reaches two distinct conceptions of a better world, and then assumes that they are identical.

That the assumption of the identity of these two ends is unwarranted can be proved both empirically and theoretically. There is no evidence that an increase of adjustment always entails an increase in satisfaction. All of the empirical evidence seems to point to the fact that an overadjustment will destroy satisfaction rather than increase it. In such communities as approximately perfect adjustments have been made, initiative has been killed, and men have sought another atmosphere in which adventure was possible. What does our world not owe to its mystics, its hermits, its non-conformists, its iconoclasts, and all the others who in refusing to be welded into the social organism have found a satisfaction which they praise as the acme of human existence? Moreover, when the whole world is taken into consideration, as in meliorism it must be, there is simply no way of determining empirically whether another world, not yet real, would be better than this world.

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For it would have to become real in order for it to become a part of empirical knowledge. An ideal world, one not yet actualized, is not accessible to empirical knowledge. This Otto practically admits when he writes: "Since in morality our chief concern is not a description of things as they are but the realization of things as we would they might be, we will define right and wrong in accordance with the end we seek." It is pertinent to ask which end, the proportionate satisfaction of all desires or the complete adjustment of all desires? Here he not only assumes the two to be identical but cuts the very ground of empirical proof that they are identical from under him by distinguishing "the realization of things as we would they might be" from "things as they are." To be sure Otto thinks that he has an empirical proof as is indicated by his statement:

> The principle of adjustment is far from novel. That is the hopeful thing about the situation. We have applied it again and again and are now applying it in small things and in great. . . . . The progeny of reforms resulting from the union of good will and intelligence is enormous, and few people will deny (to adapt James's words) that a vastly greater total number of ideals find shelter in our civilized society than in the older savage ways.

But this is only an analogy and a false one at that. For many natural processes reach their culmination and how do we know but what the culmination of the process of adjustment has already been reached or may speedily be reached? How do we know but what the time may soon come when further adjustment or attempts at adjustment will crush more desires than it will satisfy?

If there is no possibility of finding an empirical proof that a completely socialized world is identical with the completest possible life for every human being, neither can it be established theoretically. For perfect or complete satisfaction without any adjustment and complete adjustment of desires without any satisfaction are both conceivable. I can assume a world

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in which there are one thousand desires, all out of harmony with respect to each other, and yet each in the relation of being satisfied to its separate object. And I can assume a world in which there are one thousand desires, none of which is in the relation of being satisfied to any object, yet all of which are perfectly adjusted to one another. And the two sets would be opposite instead of identical. Now this proves that there is no theoretical necessity in identifying totality of satisfaction with perfection of adjustment. How, then, can an assumption that they are identical be justified? But if the assumption cannot be justified is not such an identification a logical equivocation?

Another false assumption which the psycho-dogmatic meliorists make is that the larger the number of desires which are *directly* satisfied the better the world. This is involved in Otto's principle of *proportionate satisfaction*. But may it not be that the true principle of adjustment is not proportionate but *vicarious satisfaction*.[1] There is very good reason for thinking that many of our social problems today are due to the rapid multiplication of *artificial desires*, which has naturally followed in the wake of an industrialism seeking markets for luxurious products. However that may be, these meliorists must face the fact that the multiplication of desires for the good things of life, if carried on *ad infinitum*, will make a worse instead of a better world, regardless of the amount of adjustment which creative intelligence may introduce. For the amount of proportionate satisfaction which intelligence can squeeze out of nature will not suffice to still the clamor of this unnumbered and innumerable host of adjusted desires. Some desires must find a vicarious satisfaction.

Another logical defect in the reasoning of these meliorists is circularity. For we have seen that they speak of that kind of value which is created by the harmonization of desires as

[1] For this idea I am indebted to Professor Hocking. See *Philosophical Review*, XXV, 485.

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superior to that kind created by the satisfaction of desire. Here a prior conception of value is presupposed. Otherwise how could adjustment value be called "fairer"? Does intelligence perhaps exercise two functions? Does it create the adjustment, and then create the superiority of adjustment over satisfaction of desire? Or is that intelligence which creates the adjustment offset by another contemplative intelligence which compares the value constituted by the creative intelligence with those constituted by the satisfaction of desires, and holds one to be superior to the other? But in that case these meliorists would be forced to recognize the existence of some sort of an absolute impartial spectator who would have another theory of value which would enable him to express the value judgment: "Adjustment values are better than satisfaction values." A conception of value which distinguishes two entirely distinct kinds of value, and holds one to be better than the other, cannot avoid circularity.

Then, too, these meliorists are guilty of self-contradiction when they speak of this world as a "sorry state of affairs" and of the next as a glorified social order. For our argument has already shown that a better world for them would be one in which there is both more adjustment among desires and a larger totality of satisfied desires than in this world. Or, to put it differently, the degree of betterness is determined by the number of satisfactions plus the degree of adjustment. Now in this present world there is some satisfaction of desires and some adjustment. Moreover, in this respect it is at a far higher level and far better, therefore, than the savage world, as Otto admits in the passage quoted above. And since their theory involves an infinite process of meliorization, the next world in the infinite series of increasingly better worlds would and could be only one degree better than this one. Then why call this world "a sorry state of affairs"? Why talk about making a world which will "redeem man from baseness and misery"? If this present world belongs in an

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infinite value-series next to the better world they propose to make, why be so pessimistic about this world and so optimistic about its next successor? Either this world is not so bad after all, or else the assumed better one they propose to make will not be so glorious as they think. How can the next successor to the world in which man is held to be submerged in a slough of rottenness be one in which man will be redeemed from baseness and misery? Consider, too, the fact that in the infinite evolutionary process, in which the creative social intelligence generates the successive worlds of this infinite value-series, the next successor to this world must drop out just as they insist that this one must drop out to make room for it. It is not to be allowed to remain any longer than this. Both are transitory phases of an onward moving process. Then again we must ask, How can the next successor be much better than this world? In any case how can it be enough better to justify the direst of pessimism for this world and the rosiest of optimism for it? It will only differ in degree, not in kind, from this world. Like this it will be transitory, and it will be a world in which all desires will not be satisfied and in which complete adjustment of desires will not exist. In fact, in an infinite process of meliorization one stage cannot be much nearer completeness of adjustment than the one next to it. It would seem, then, that to avoid self-contradiction these meliorists must either give up their pessimism about this world or their optimism about its next successor. I am not sure but what logical consistency would demand that they give up both in favor of such resignation as ennobles Mr. Russell's "free man."

The root fallacy underlying psycho-dogmatic meliorism is an abstract conception of intelligence, which both deindividualizes it and robs it of all affective volitional content. If psycho-dogmatic meliorists would admit the reality of a self within which desires and cognitive processes are equally abstract and artificial elements, they might reach a consistent theory of value not far from that of the self-realizationists.

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But having substituted an abstract creative social intelligence for a real, concrete living intelligence, which individualizes itself in social institutions, customs, and laws, as well as in great personalities, they have to cry for a harmony which can never be realized. And what boots it if they say, "We *will* have it so," when reality or the nature of things replies, "You cannot make it so"?

Our critique of psycho-dogmatic meliorism has brought us to the conception of an infinite value-series of worlds, each successive member of which is held to be better than its next predecessor. This idea of an objective value-series is the basic principle of *logico-critical meliorism.* But along with this assumption goes another, namely, that the fundamental value universal or category is the relation *better-or-worse-than.* Good and bad in general, as well as moral goodness and badness and aesthetic and other specific values, are defined in terms of this relation. It is an open question as to whether the betterness-worseness relation is definable in non-value terms, but it is held to be indefinable in value terms. In other words it is the basic postulate of the system of values. However, three different senses of *betterness* are differentiated, and the essential meaning for logico-critical meliorism is *intrinsic betterness.* Considering any given relation of betterness, this means disregarding the consequences or effects of the two entities involved, observing each one alone and judging that one is intrinsically better than the other. This involves the tacit assumption that betterness is a dyadic relation, of which the converse is worseness. The betterness-worseness relation ties together all existential entities in the value series in such a manner that of any two successive members one is better and one is worse than the other.

The negation of both better and worse is said to constitute value equality. It is not clear whether the negation of both better and worse means the complete absence of the relation, or whether, on the other hand, there is a negative form of the

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relation betterness-worseness. However, since the negation is supposed to constitute value equality, the latter must be meant, but just what the negative form of the relation is does not appear even between the lines. However, it is said to hold between some existential facts in the value series and between all non-existential facts in the series. For some existential facts are said to be equal in value, and all non-existential facts are said to be equal in value.

This distinction between positive or existential facts and negative or non-existential facts is important in defining good and bad. These are spoken of as qualities which apply only to positive or existential facts. The proof that they are qualities is not given. The proof that they apply only to positive facts is that all negative facts are equal in value and hence neither good nor bad. The proof that all negative facts are equal in value is promised later! Moral goodness and badness apply only to voluntary or intentional conduct, that is, to a special type of positive fact. To call an existential fact good means to assert that its existence is better than its non-existence, and to call it bad means to assert that its non-existence is better than its existence. Applying this idea to the better world which meliorists wish to make, it would mean that the existence of that world is better than its non-existence. And when meliorists speak of this world being bad and the one in the making being good, they evidently mean that the non-existence of the present order is better than its existence whereas the existence of the new world that is to be is better than its non-existence. This, I take it, would be the application of this theory of value to the general proposition of meliorism that we can make a better world.

Professor A. P. Brogan is the originator of this interesting interpretation of meliorism.[1] He elsewhere expressly characterizes the theory as "the melioristic theory that all values

[1] See his article, "The Fundamental Value Universal," on which the foregoing exposition is based, in the *Journal of Philosophy*, XVI, 96 ff.

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are ultimately concerned with the better and the worse." And again, he writes: "Meliorism is the doctrine that intrinsic betterness is the fundamental value category." Now he here quite obviously uses the word meliorism in a much wider sense than do those meliorists who restrict it to the doctrine of making a better world. For him it denotes a technical theory of value, superior to any which has thus far been advanced. He writes: "So far as I know the main contention of this paper is new. It was suggested by a synthesis of modern theories of value with the new logic of relations. Such a system would have been impossible before the development of the logic of relations."[1] Now this theory of value is especially significant from my point of view because no less a meliorist than Professor Dewey has gone on record as having abandoned the theory of value as the satisfaction of desire in favor of this theory of intrinsic betterness. Referring to a previous article in which he had accepted the position that "value is constituted by interest, liking, vital bias," he writes: "I should like to place on record, however, my own adhesion to the theory advanced by Dr. Brogan. . . . . His view is that value-judgment has for its subject-matter a relation better-or-worse-than."[2] This noteworthy and frank confession transfers Professor Dewey from the psycho-dogmatic group of meliorists to the logico-critical. But in any case a critique of meliorism could hardly be regarded as complete which did not expose the logical defects in Brogan's theory of value.

Now, in the first place, he cannot prove that the betterness-worseness relation is a dyadic relation. That he holds it to be such is an unwarranted assumption on his part. For A cannot be judged better than B, if A and B are each considered absolutely alone. In any case the judge would have to make a comparison, and that would make him a third member in the relationship. Of course Brogan regards him as an impartial spectator of the value series. Let it be so. Still he could not

[1] *Op. Cit.*, p. 103 (note). [2] *Philosophical Review*, XXXI, 334 (note).

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possibly make a judgment of comparison, if he did not perceive in A more of some third nature, say C, than he perceived in B. He must make use of a standard in making the judgment of comparison, and howsoever relative that standard may be, it must be intrinsically related to the other two terms. Hence the relation betterness-worseness is not comprehensible as a dyadic relation. There is a logical complexity involved in this relation which Brogan has missed. In short, *it is clearly a triadic relation.*

In the second place, no meaning can be attached to his theory of good and bad; for applied to any concrete judgment, such as "The apple is good," it would reduce it to the purely vacuous statement "The existence of the apple is better than the non-existence of anything." For he says that the goodness of A (any entity) means that its existence is better than its non-existence, and he says that all negative facts are equal in value. Hence the assertion "The apple is good" would be equivalent to the assertion "The existence of the apple is better than the non-existence of anything." To me this is meaningless. I cannot conceive of anyone thinking that the goodness of an apple is as nebulous as that.

And, finally, what about the application of this logico-critical theory of value to the determination of what would be a better world than this present world? The present specific set of conditions, to revert to Dewey's terminology, is an existential, positive fact. But any proposed better world is, by hypothesis, non-existential. It has yet to be created by human social intelligence. So also are all past "specific conditions" now non-existential. They have been sloughed off in the onward urge of creative intelligence. But according to Brogan's theory all non-existential, negative facts are equal in value. How then can this present actual world be judged better than its next predecessor and worse than its next successor? If both its next successor and its next predecessor are negative, non-existential facts or sets of specific conditions, they

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are equal in value. How can a positive fact or set of positive facts be better than a set of negative facts (the next predecessor to this world) which is equal in value to another set of negative facts (the next successor to this world) which is judged better than it? I do not say that Brogan has fallen into this logical contradiction. I only mean that whoever attempts to incorporate his theory of value into the social philosophy of making a better world cannot escape it. Meliorism will die from the dry rot of its own logical inconsistencies if it does not mix with its propaganda an intelligible answer to one of the perennial questions of philosophy: *What is value?*

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DISCUSSION

GEORGE W. MULLINS

The July number of the *Journal* is distinguished by a very attractive essay by Mr. R. Austin Freeman upon "Some Ethical Consequences of the Industrial Revolution." But it appears to one of your usually silent readers that much of its apparent attraction rests upon two fallacies, and that, in the interest of sound thinking, these should be examined.

Mr. Austin Freeman's argument appears to start from the conviction that handicraft is essentially pleasant—therefore the craftsman or handworker is under no temptation to scamp his work or overcharge for it; love and pride, easy in such case, keep him commercially untempted and therefore pure. But with the incoming of machinery and large production pride in and love of one's work disappear; commercialism debauches the minds of capitalists and workers; the interests of maker and consumer no longer "march together"; and industry becomes non-human and non-moral, even inhuman and immoral.

Incidentally one may remark that if the craftsman were only moral because it was pleasant to be so, his morality did not go very deep. He did not "serve God for nought." I let that pass, however. I would point out that Mr. Freeman has overidealized the craft-labor which he describes so lovingly. It is so different to be an amateur. I love and work in my garden, but if I had to plant by hand acres of cabbages for a livelihood I should find the work much less interesting. To bind single books—each different and done differently—appeals to an artist; but how about doing by hand say 3,000 copies of the one work? Is washing *all* the household linen a job which one lingers over quite so lovingly and is never tempted to scamp; the lace is, of course, pretty to do! How about cleaning the domestic grate? Upon Mr. Freeman's argument, since the superior morality of handicraft depends upon its specially pleasurable character, it will, I fear, disappear when the craftsman sits down to his unescapable, hard, and routine jobs.

I find a similar fallacy in Mr. Freeman's assumption that craftsmanship tends always to think of its products in terms of their use or function, whereas large production thinks of them in terms of the available machinery. From the very nature of things both methods of production have to think of product and its uses and of product and its means of production together. An old-time blacksmith, for example,

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could not have considered the things he proposed making save with reference to his existing tools and skill in using them; and a modern steel-mill engineer does not think of steel primarily in terms of his rolls and apart from all he knows of its uses and qualities.

So much for Mr. Freeman's basic assumptions. But I would like to go farther and ask him to consider what would follow if the general argument of his paper were true. The great trades are, as he sees, the world's basis of material welfare; by them we are fed, clothed, and housed. They provide the mechanisms of travel, of learning, of healing, even of religion. Are there fewer or more people in the world today than before the Industrial Revolution? Are they as a whole and in material things, worse maintained or better; with, in the main, longer or shorter hours of labor? The questions answer themselves. Population is larger, comfort at a higher level, hours of labor less—this notwithstanding the admitted defects of world-civilization. Upon Mr. Freeman's argument the less moral production process renders the greater service to humanity; which is a curious argument in the hands of any sort of an idealist.

Or look at it from another angle. There are still handicrafts and "small-service" jobs among us, as opposed to "large-service" jobs or large production, e.g., domestic service. Are servants, as a class, more honest, more efficient, rendering a more valuable service to the community than the workers who serve our great industry? Is the privately owned and worked car or wagon a more perfect instrument of travel or of transport than the great railway? Differences of size eliminated, does the small country sweet-maker supply better wares, at a cheaper price, or with more of public responsibility than say Messrs. Rowntree or Cadbury? Surely the facts are against Mr. Freeman.

The world is full of fault and failure. Capitalism, large-scale production, is one system in the economic evolution of society. It arose out of other and by no means perfect systems; it may be destined to pass away in ruin, but I rather anticipate it will endure until it has helped humanity to other and better systems of which it will become the handmaid. Meanwhile we know it has its faults. But it is not to be bettered, not even to be understood, by supposing a simpler, more delightful, and more moral system which it debauched and ultimately destroyed. Not by such artificial simplification can human history be understood or human progress aided.

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BOOK REVIEWS

MAN AND THE COSMOS. By Joseph Alexander Leighton. New York: D. Appleton & Co. Pp. xi+578.

The world may seem hopelessly awry and even an individual life may baffle the attempt to make a rational whole of it, but philosophers exist who propose to reduce the universe to one principle. Well-informed men may find it impossible to make head or tail of so limited a tangle as the Ruhr situation, and the scientist may confess his inability to encompass the science to which he has devoted his life, but these philosophers aim at a total, self-consistent interpretation of every phase and feature of human experience and ultimate reality. They will be satisfied with nothing short of a critical appraisal of the primary assumptions of all the knowledges and a unified synthesis of the conclusions of all the sciences.

Professor Leighton's "Man and the Cosmos" is a venture of this kind. "Every special science," he reminds the reader, "and every form of practical activity interprets the facts of experience from some limited and one-sided or abstract point of view." The philosopher proposes to correct these abstractions; "to take stock of the universe as a whole, of himself as a whole." And Professor Leighton makes a serious attempt to carry out this aim, and does so in a manner more readable and lucid than is common.

"Any author is easy," said William James, "if you can catch the center of his vision." If we may adopt this dictum without taking it too seriously, we may say that the center of Professor Leighton's vision is the supreme value of striving humanity. "*A single human* self," he asserts, "*has more of value in it than an infinite chaos of atoms or electrons.* To talk about meanings and values inhering or enduring in a so-called universe in which personalities are accounted merely transitory elements is to talk nonsense." Again, on the assumption that there is no higher self than the finite selves we know, "finite selves are not only the highest beings in the universe, but they are higher and worthier beings than the chaos which has engendered, and will engulf, these paradoxically tragic beings which are able to rebel against, to judge and condemn, the insensate welter of physicochemical transformations."

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This being the central truth, the rest necessarily follows. To begin with, the universe must be a unified totality, a cosmos, dominated by inviolable law. In no other universe would humanity be intellectually or spiritually safe. It is not enough, however, that the Ultimate be the principle of order; it must likewise be the ground of values; otherwise "we reduce all values to mere ephemeral tracings on the shifting sands of the purely human," i.e., we have no real values at all. From which it follows that "the organizing and conserving order of the universe throughout its history must be an active reason or intelligence." "For, if the cosmos as a whole be a brute insensate procession of merely physical forces, it is alien and hostile, simply because it is indifferent, to meanings and values." Furthermore, this conservator of order and values must be some form of personality, since "the notion of an impersonal all-inclusive spirit, conceived as the sufficient ground of reality and values," is wanting in the necessary definiteness. On the other hand, this personal being cannot be identified with the ABSOLUTE. An absolute self which includes finite selves as an aggregate or collection is "not one perfectly unified and all-inclusive self; and a universal self which "includes and synthesizes into a perfect unity the lives of all imperfect and changing selves is not a self at all" (selves implying other selves), and "in the process of transmutation the finite selves must lose all that constitutes selfhood." Any theory which dissolves finite selves into a phantom pays too heavy a price. Thus the conclusion must be that the cosmic ground is some sort of over-self, or better, "a spiritual community, of which the highest finite personality is our best available adumbrations, however imperfect a foreshadowing it be."

I do not mean that this is actually the way Professor Leighton deploys his proof, nor even that these are the conscious steps he takes to arrive at his conclusion, but only that in an extremely summarized form it makes clear the vital movement of his thought. The primary aim is to win deep and permanent meaning for human personality by finding a significant place for it in a universal order, by coming into conscious harmony with which we realize our rational individuality. To carry out this aim demands, according to this view, a complete survey of the facts that have a bearing on the case.

The usual defect of such syntheses is one inherent in the method. To attain a unified picture in which everything has its proper place usually involves a good deal of distortion of experienced facts. Professor Leighton does not conform to type in this respect. He shows a genuine anxiety throughout the book to be true to what after all must be our

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ultimate standard, namely, the data of experience; and he makes a real attempt to appreciate the standpoint of philosophers in disagreement with him. In this attempt he does not of course always succeed, at times indeed misunderstands very badly; nevertheless he succeeds rather too well. When Professor Leighton puts a period at the end of his 564th page, considerable trimming and fitting are still called for to make the parts of the puzzle fit together as an unbroken picture.

Of the presence of these refractory elements one is more or less conscious throughout the book. A few examples must suffice. Professor Leighton offers both totality or comprehensiveness, and anything that must be dealt with in the ordering of our lives, as the criterion of reality. He stresses the spiritual autonomy of finite selves and thus destroys the supreme unity of the over-self which he insists upon. He holds to the reality of evil and finds no logical place for it in his perfect world order. This feature of the book is most apparent perhaps in the discussion of truth. The author's first love is the coherence theory, but he cannot resist the charms of the correspondence theory, and he openly flirts with instrumentalism. There could be no objection to this if it resulted in a clear conception of truth which made use of the valid elements in each. But it results only in vagueness. True propositions must agree with fact and reason, and must work satisfactorily. Who would not agree with that, whether he is idealist, realist, or pragmatist? This is not a hypercritical demand for a foolish consistency, for we must not forget that the aim of the book is to establish a supreme principle of order, continuity, and wholeness as the cosmic ground.

All this, I know, gives little indication of the labor and erudition and experience of life which have quite evidently gone into this attempt to be true to the classic ideal of philosophy. Nor does it give more than a hint of the numerous difficult subjects, such as substance, relations, causality, time, space, consciousness, the subconscious, evolution, mind-body, etc., discussed and placed so as to save the individual from living in the midst of fragments and chaos. Admitting the daring and the impressiveness of the attempt, I should wish (speaking for myself) that this equipment and energy had been under less necessity to include everything; had centered upon fewer themes, and developed these with more fulness and depth. It is an ungracious but honest confession that the banquet would have been much improved had there been fewer courses and these better cooked.

M. C. Otto

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SHORTER NOTICES

THE ENEMIES OF LIBERTY. By E. S. P. Haynes. London: Grant Richards, Ltd., 1923. Pp. 192. Price, 6s. net.

Mr. Haynes, adopting Lord Bryce's classification of liberty under the four heads, civil, religious, political, and individual, only concerns himself within the compass of this essay (a sequel to his *Decline of Liberty in England*) with the question of liberty where the state is directly or indirectly concerned. His is a reaction, parallel with that in contemporary philosophy against state-worship, a voice crying in the wilderness for vanishing individualism while our world of today is busy in the task of levelling everybody down to the same standard of servitude." The state has immense resources, and the individual counts for nothing; the idea of individual liberty as a right was unknown to the ancient world, and is still unknown in the Near and Far East; in China the individual is insignificant except as the member of a family or of a village community. But in the downfall of the ancient world we see an approach to individualism in the stoic philosophy; and later the true individualism of Christianity, for "When Jesus Christ said that a man must leave his father and his mother in order to follow him, the idea was far more revolutionary than it may appear to a modern European, for it represented a revolt against the unit of the family." England, the home of small owners until the industrial revolution, became the bulwark of liberty, for "liberty is essentially bound up with property" (p. 14). He foresees that if the modern civilized country is to escape the fate of becoming a crowd of propertyless persons, dragooned by the masters of industry, it must encourage the peasant prospector and small investor, who in their turn will probably practice some sort of birth control in the French model. The great part of the essay is, however, very alert and pungent, strictures on those who oppose liberty, especially those who seek to reduce the sphere of which Lord Moulton called "the unenforceable region of conduct," enlarging, that is to say, the sphere of legal compulsion and diminishing the sphere of moral obligation. The chapters on prohibition and prudery are very amusing reading and, incidentally, a serious historical retrospect. It should be noted that the present Bastardy bill and divorce reform will do away with the reproach of Mr. Haynes (p. 31). His view of the late Mr. Mallock (whose death he considers a blow to the cause of clear thinking and public enlightenment) is overindulgent.

THE MORAL LIFE OF THE HEBREWS. By J. M. Powis Smith. Chicago: The University of Chicago Press, 1923. Pp. ix+328.

It is strange that the moral life of the people which documented its development more fully than any other, should have waited so long for this objective and careful account. The author has indeed confined himself for the most part to the task of presenting the historical facts as found in the documents of successive periods; he has not attempted a study of the interaction between the economic, social, and political conditions on the one hand and the development of moral standards on the other. Even the religious background is assumed rather than analyzed.

But with these limitations, which the author himself recognizes, the book is an admirable account. Part I treats the morals of pre-prophetic Israel; Part II, the morals of the prophetic period; Part III, the morals of Judaism. This third part includes an interesting chapter on the morals of the Egyptian Jews, as discovered in the papyri from Assuan, which show less idealism in certain respects, but greater freedom for women than is shown in the Old Testament. The reference to a female deity is also significant.

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With this convenient and fairly comprehensive, even though concise survey of the facts, the student of moral evolution will be able to proceed toward an attempt at their explanation and interpretation.

BLOOD REVENGE, WAR AND VICTORY FEASTS AMONG THE JIBARO INDIANS OF EASTERN ECUADOR. By Rafael Karsten. Washington: Government Printing Office, 1923. Pp. 94. Price, $0.60.

This monograph from the Bureau of American Ethnology is of unusual interest for the student of comparative morality. The Jibaro Indians have developed to an unusual degree the technique and the economic and religious aspects of the feud and of intertribal wars. In preparation for war and for the subsequent feasts the Jibaro subjects himself to rigorous discipline including fasting and sexual continence for periods of months. The head of the enemy is sought as a trophy, but it is also believed that this when treated in proper ritual will give the victor control of unseen forces which will make his crops flourish and otherwise strengthen him. In fact, the psychology of this tribe furnishes an excellent illustration of the extent to which any sufficiently important activity may embody the religious and moral values of a people.

MY WINDOWS ON THE STREET OF THE WORLD. By James Mavor. In two volumes. New York: E. P. Dutton and Company, 1923. Pages: Vol. I, xi+400; Vol. II, viii+452. Printed in Great Britain.

Those who have been fortunate enough to know the author of these two volumes will be prepared for an unusually significant account of men and affairs that have come within his wide experience in Europe, Asia, and Canada. His *Economic History of Russia* is well known. His pictures of his early life in Scotland are vivid and his observations upon social movements are those of an acute, eager mind. Chapters on Russia, Japan, China, are of value not merely as throwing light upon past history, but as comment upon fundamental traits, and the story has everywhere the freshness of personal narrative.

DEVELOPMENT OF SOCIAL THEORY. By James P. Lichtenberger. New York: The Century Company, 1923. Pp. xiii+482.

This volume is, in the words of the Preface, "not a history of social theory." On the other hand, it is not, as is the case with many modern texts for the classroom, a series of selections from the authors with very little editorial material. It is rather an attempt to give a summary or picture of the views of leading authors, partly by exposition, partly by quotations of important paragraphs. The field included extends from Plato and Aristotle to the present time. Sufficient biographical and bibliographical material is given to make the book useful in the classroom and there are topics for critical study appended to the several chapters. This is probably the best source to which the student can be directed for "first aid" in the history of social theory.

Le Tribunal pour Enfants. Étude sur le Traitement de l'Enfance délinquante en France. By Chloe Owings. Paris: Les Presses Universitaires de France, 1923. Pp. vii+331.

Dr. Owings, who had had experience in social work in the United States and came into intimate contact with many phases of French institutions through her work in Paris during the war, presents in this dissertation a study of the processes and methods pursued in France and especially in Paris in the treatment of juvenile delinquents. The French methods of procedure are more strictly legal in character than is the procedure in juvenile courts of the United

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States. In particular, no such use has been made of the investigations by the probation officers for the benefit of the court as has been found useful in the United States. "In France the juridical mind and temper which produced such fine results in purely theoretical researches does not seem to yield all that one might expect in the application of these results." There are many instructive comparisons between the French and American procedures and both social workers and legal students will find Miss Owings' study a valuable source.

EDUCATION AND TRAINING FOR SOCIAL WORK. By James H. Tufts. New York: Russell Sage Foundation, 1923. Pp. xii+240. Price, $1.50.

This study undertaken for the Russell Sage Foundation consists of two parts: I, The Field of Social Work; II, Problems of Education and Training. Part II is of interest chiefly to those who belong to the profession or who have to do with problems of education and training, although certain of the educational problems considered are not limited to this specific field. Part I considers the aim, scope, and method of social work with especial reference to its relationship to the various social institutions. It finds a central field of social work which is well defined. It finds border fields which concern the family, governmental functions, economic institutions, hygiene and medicine, recreation and the arts, which are far less well defined. Perhaps the most important as well as the most difficult task of the profession of social work is to "undertake leadership in the larger and more fundamental tasks of discovering the trends and needs of human society, of studying the underlying forces of every kind so far as they focus upon human welfare, and of attempting to contribute toward reshaping institutions and directing forces involved."

THE NEIGHBORHOOD IN NATION-BUILDING. By Robert A. Woods. New York: Houghton Mifflin Company, 1923. Pp. viii+348. Price, $3.00.

In *The Settlement Horizon*, reviewed in a former number of this *Journal*, Mr. Woods gave a comprehensive statement of the development and philosophy of the social settlement. This present volume is a collection of papers which for the most part have appeared in print before. They "represent a series of landmarks in the gradual progress and expansion of the motive suggested by the title, as expressed in terms of one person's experience." They are characterized by the breadth of view, the sanity and the vision which those who have known the author's work have come to associate with whatever he attempts.

SOCIAL PROBLEMS AND SOCIAL POLICY. Edited by James Ford. Boston: Ginn and Company, 1923. Pp. xiii+1027. Price, $4.00.

This is a volume of selections from a wide range of sources, arranged under the following heads: I, Social Purpose; II, Social Method; III, The Problem of Defectiveness; IV, The Problem of Poverty; V, The Problem of Criminality. They make materials available which would be otherwise difficult of access in many cases. The value of such a book for study naturally depends largely upon the skill of the instructor in guiding criticism and organization.

MODERN THINKERS AND PRESENT PROBLEMS. By Edgar A. Singer. New York: Henry Holt and Company, 1923. Pp. vii, 322.

There is no single type of "introduction" to philosophy which commends itself to all. This volume, which presents certain of the typical personalities of the history of thought in a style which is always clear and sometimes brilliant, illustrates a method which ought to interest the beginner and which might be used in combination with a systematic or topical method if desired. The

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leading authors studied are Bruno, Spinoza, Hume, Kant, Schopenhauer, Nietzsche, and Royce. There are also chapters on "Progress" and "Pragmatism". Each author, however, is presented not for the purpose of giving a complete view of his thought, but rather as embodying some typical attitude. It is likely to take its place with the few books that can be recommended to the beginner as fascinating and non-technical.

AN INTRODUCTION TO REFLECTIVE THINKING. By Columbia Associates in Philosophy, Laurence Buermeyer, William Forbes Cooley, John J. Coss, Horace L. Friess, James Gutmann, Thomas Munro, Houston Peterson, John H. Randall, Jr., Herbert W. Schneider. New York: Houghton Mifflin Company, 1923. Pp. vii+351.

This volume, in which nine members of the staff of the department of philosophy at Columbia University have co-operated, "is intended to show thinking at work by describing some of the great achievements of thought in the fields of science and morals." It is the outcome of one of many lines of hopeful experimentation at the present time in the direction of more concrete and stimulating courses for the Freshman year of college. It covers some of the ground that hitherto has been dealt with, if at all, in logic, but it makes greater use of the historical method. It traces for example the development of hypotheses in astronomy, showing how Ptolemy dealt with his material and just why the hypothesis of Copernicus gradually gained acceptance; similarly the Pythagorean theorem serves as the task of examining mathematical thinking, and Pasteur's investigations for experimental work in biology. In the historical field the criticism of the Pentateuch is selected. The chapter on thinking in law gives at least a guiding thread for entering upon that difficult field. Some of the chapters are more successful than others, but the more able students will undoubtedly find the book enlightening and stimulating.

HISTORY OF GREEK PHILOSOPHY, THALES TO DEMOCRITUS. By B. A. G. Fuller. New York: Henry Holt and Company, 1923. Pp. xii+290.

The author of this latest history of Greek philosophy addresses his volume not to the advanced students but to beginners. His effort is to present his material in a way to interest as well as to inform. The history of philosophy in his view "is the story of perhaps the most exciting and sensational pursuit with which the human mind has diverted as well as ennobled itself." He aims to be not severely objective and impartial but rather to be thoroughly partial to each new system. There is of course little formal ethics in this period, but there is an extended chapter on Greek religion. The author has succeeded well in the purpose which he has set before himself.

AMERICAN THOUGHT: FROM PURITANISM TO PRAGMATISM AND BEYOND. (2d ed.) By Woodbridge Riley. New York: Henry Holt and Company, 1923. Pp. 432.

Professor Riley has, in this second edition of *American Thought*, made no changes except to add sixty-five pages. About half of this addition serves to bring the realistic movement in America up through "Critical Realism." The remainder constitutes a concluding chapter on "Some French Influences" in America. The latter discussion encompasses "Electicism" as represented by Victor Cousin, "Positivism" as represented by Auguste Comte, and "Creative Evolution" as represented by Henri Bergson. This added material makes more useful at the present what has always been a very readable exposition, with some criticism, of philosophy in America. Ethics as such is not emphasized.

T. V. SMITH

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FREEDOM AND ITS FUNDAMENTALS. By Charles T. Sprading. Los Angeles, Libertarian Publishing Company, 1923. Pp. 255. Price, $1.50.

This book presents essentially the principle of Mill's liberty and Herbert Spencer's view of state action. It consists largely of assertions in the form of epigrams rather than of analysis and reasoned construction.

THE RISE OF UNIVERSITIES. By Charles H. Haskins. New York: Henry Holt and Company, 1923. Pp. ix+134. Price, $1.50.

Three lectures are included in this volume, the first on "The Earliest Universities," the second on "The Mediaeval Professor," the third on "The Mediaeval Student." The last of these contains considerable material not generally familiar, drawn from original sources. The morals and manners of the mediaeval student as here disclosed do not place the modern student in a wholly unfavorable light by comparison. If a student is in danger of failing in his final examination, "let him write home for money and give a great feast for his professors; if he treats them well, he need not fear the outcome."

APPLIED PHILOSOPHY. By C. Y. C. Dawbarn, M.A. London: Longmans, Green & Co., 1923. Pp. 331. Price, 5s. net.

It is difficult to imagine any reason for publishing this book; it is impossible to discover any reason for reading it. The author was president of the Liverpool Literary and Philosophical Society in 1919 and some parts of the book were addresses delivered to a Rotary Club and other such societies. It contains an apparently fortuitous collection of platitudes, together with most astonishing historical mistakes, such as that the historical Christ lived at Alexandria and was aware of the teaching of Zoroaster and Buddha. The author desires to advocate what he calls "creedless Christianity," but why he should imagine that any part of his work is "philosophy" is impossible to grasp. Perhaps he thinks that when any statement is sufficiently vague, it may be regarded as philosophical. As for the practical application of his platitudes, it cannot be expected outside a lunatic asylum.

C. D. B.

SOCIAL AND POLITICAL IDEAS OF SOME GREAT MEDIAEVAL THINKERS. Edited by F. J. C. Hearnshaw. New York: Henry Holt & Company, 1923. Pp. 223. Price $3.00.

Introducing this book of lectures with an illuminating distinction between "political thought," the half-conscious habit context of an age, and "political theory," the speculation of particular thinkers, Principal Ernest Barker lays the basis for an unusually broad-minded and balanced survey of the social thought-life of the Middle Ages. The contributors who follow Barker, though traversing what is supposed by many to be a desert period, present hardly a dry page as each escorts his man across the stage. A. J. Carlyle assumes responsibility for St. Augustine; E. F. Jacob for John of Salisbury; Rev. F. Aveling for St. Thomas Aquinas; E. Sharwood Smith for Dante; Eileen E. Power for Pierre Du Bois; J. W. Allen for Marsilio of Padua; and the editor, F. J. C. Hearnshaw, for John Wycliffe. Given as popular lectures in King's College, London, during the autumn of 1922, the chapters are for the most part undocumented; but each has a bibliography at the end. No one can fail to admire the art, admirably illustrated throughout this volume, of making instruction so enjoyable.

T. V. SMITH

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THE NEW TESTAMENT. AN AMERICAN TRANSLATION. By Edgar J. Goodspeed. Chicago: University of Chicago Press, 1923. Pp. ix+481. Price, $3.00.

This new translation, which aims to keep the spirit of the original by using the common language of everyday life rather than a distinctive literary language, will give fresh interest to those who are familiar with the older version "appointed to be read in churches," and it will very likely attract readers who are not sufficiently familiar with the older version to know whether there are any changes. For in the case of one of the synoptic gospels, such as Mark, or in the more personal writings of Paul, the story comes with unexpected freshness and directness which would stamp it unmistakably as a great human document irrespective of any sanction from authority or tradition.

FIVE CENTURIES OF RELIGION. Vol. I, St. Bernard, His Predecessors and Successors, 1000–1200 A.D. By G. G. Coulton. Cambridge: University Press, 1923. Pp. xliii+578. Price, 30s. net.

The present volume is the first of three, dealing with monastic history. The second, dealing mainly with the thirteenth and fourteenth centuries, will be entitled "The Friars and the Dead Weight of Tradition"; the third will deal with the reforming efforts of the fifteenth century and with the catastrophe of the sixteenth. The author aims to explain both why monks were once so many and why they are now so few. "The root problems of monasticism is one which every ideal has to face; . . . . can we best serve our higher aim by crystallizing into a society within Society, and so cutting ourselves off from the contagion of the unideal multitude? Or is it a braver and more effectual choice to keep full touch with the rest, always conforming so far as conformity is morally permissible, and hoping gradually to leaven the world by constant intercourse? The modern idealist generally makes the latter choice; the monk made the former."

The author has a great mass of material at hand, drawn from original sources. The strong contrasts in the monastic life, the Puritan ascetic strain, the artistic strain, the conflicting elements of its attitude toward sex are brought out. It is an important volume for the student of moral ideals.

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THE INTERNATIONAL JOURNAL OF ETHICS

Volume XXXIV APRIL 1924 Number 3

REASON AND MORALS

ISRAEL LEVINE

I. THE REALITY-PRINCIPLE

In modern psychology reference is frequently made to a conception known as the "Reality-Principle." A person's behavior is said to conform to the reality-principle when it is, in ordinary words, sensible or reasonable; when the person is not dominated by purely selfish, egoistic impulses, imperiously urging to their immediate gratification, but behaves in a way which accords with the facts of real life and is in harmony with the claims of other people.

In the first years of its life a child does not conform to the reality-principle. It follows what is called the "Pleasure-Principle." Its behavior is directed to the immediate satisfaction of each impulse as it arises, and its actions are motived by nothing except the strength of its inner wants. But experience gradually suggests the dangers of this procedure, and the crude operation of the pleasure-principle is in time replaced by what is simply a modification of itself, namely, what has been called the reality-principle. Freud, to whom the use of these terms belongs in the first instance, describes the replacement in this way. He writes:

> The Ego learns that it must go without immediate satisfaction, learns to endure a degree of pain, and altogether renounce certain sources of pleasure. . . . . It is no longer controlled by the Pleasure-principle, but follows the Reality-principle.[1]

[1] *Introductory Lectures on Psycho-Analysis*, p. 299.

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It is only after long training, extending far into adult life, that an individual can become habituated to act in conformity with the reality-principle, and can, as a result, take his place in the community to which he belongs as a socialized, moralized, reasonable creature. Some of his impulses, indeed, prove so strong that they never become thus habituated, but follow the pleasure-principle crudely throughout his life. But if the individual is to survive he must adapt himself, broadly and generally, to real life. He cannot surmount the inexorable laws and properties of the real world: and if the amount of his maladaptation is too great, if he insists in flagrantly gratifying his impulses in blind defiance of the claims of other people or the facts of reality, the social group of which he is a member will remove him or destroy him. Society does not tolerate childish egoism, beyond a certain point, in its adult adherents.

What meaning, it will be asked at once, is to be attached to the word "reality," in the expression "reality-principle?" As it has been used, it is very general and vague. It stands for something imposed on an individual by the conditions of the world in which he finds himself. But it is possible to make the conception more precise. We can distinguish, for example, physical and social aspects of reality. (*a*) Reality consists, in the first instance, of certain physical facts. The world has certain definite characteristics, which no amount of imagining or volition or any other psychical process can affect. To persist in ignoring these characteristics, to play, for example, with matches and dynamite, is to court disaster. The first education of a child is directed to the appreciation of these physical characteristics of the world. (*b*) But reality consists also, for a member of a civilized group, of certain *social* facts. To appreciate these is just as vital to the welfare of the individual as to appreciate physical facts. To ignore social facts, in other words, the conditions under which alone social life can be maintained, is to court disaster also. If a person refuses to accommodate himself to the facts, for example, of the economic system under which his group lives, accepting neither its

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conditions of employment nor its charity, he must starve and die. If he refuses to abide by social conventions or moral regulations he will be ostracized, segregated, or destroyed.

Reality, therefore, stands for both physical and social facts. But the conception requires still further analysis. The real, as Hegel shows, is not simply identical with the actual. The mass of empirical data which constitute "existence," in Hegelian language, are a formulation or conception of reality, rather than reality itself. They are partly reality, if we like. They have not attained, however, complete reality. The latter has a richer content and a deeper significance than existence or actuality. It is the actuality, the "this" and "now," suffused with higher understanding, with universality. The actual, in other words, is a stage on the road to the real, a version of the real, an imperfectly developed real.

To follow the reality-principle, then, which we have seen to be the condition of survival for the individual, involves the recognition and acceptance of both physical and social laws. It signifies, to become adapted to the real world in which we live, "real" being distinguished from "actual" on the lines of Hegel's broad differentiation.

II. REASON AND THE REALITY-PRINCIPLE

I suggest, next, that the expression "to follow the reality-principle" gives an important clue to the meaning of the term "reasonable." Reason, in fact, is the capacity of an individual to adapt his behavior to the conditions of the real world in which he lives. When we call a person "unreasonable" we simply mean that the person is acting in a stubbornly self-centered way, incompatible with either the facts of real life or the claims of other people. To "reason" with such a person is to present those facts or claims to his notice, to enable him to adapt his conduct to the conditions of real life.

It makes no difference, of course, whether those conditions be physical or social. If a person imagines that twice two are five he is unreasonable, because the facts of the real world are

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such that twice two are not five. If he insists that he is the Emperor of China, in spite of adequate evidence to the contrary, he is unreasonable in exactly the same sense. The test of what is reasonable can only be found, in the last resort, in the facts of real life, whether those facts be physical or social.

Such a view requires, it may be noted, the assumption of a distinction between psychical reality, or the world of an individual's mental processes, and material of social reality. In the case of normal, reasonable persons there is such a distinction, material reality acting as a check, so to speak, on what is psychical. We may say, then, that it is the capacity of an individual to appreciate the facts of real life which constitutes the measure in which he can be held to possess reason.

But, it may be asked, does such a reduction of reason to a mere capacity of the organism not detract from the peculiar supremacy of reason in the hierarchy of mental activities? If reason is just a general name for the capacity of adapting one's behavior to the conditions of real life, how can reason be itself objective, universal?

The answer to this, as I have shown at greater length elsewhere,[1] is that reason should not be regarded as a rigid, sacrosanct faculty, with categories of its own which are inexplicable and ultimate, but should rather be conceived as a developing capacity, bound up in its essential features with the synthetic or integrative activity which marks life itself. We may regard reason as objective and universal; but we derive these characteristics, strictly speaking, from the objectivity and universality of the real world. It is there, in reality, in the properties of molecules, if we put it crudely, that the clue to objective and universal is to be found. Reason itself is the capacity of appreciating the properties of molecules, of adapting the behavior of the organism to the facts of reality. The high survival value which the evolution of this capacity carries is reflected in the unchallenged supremacy of reason among human

[1] In *The Unconscious*. Leonard Parsons, Ltd., London, 1923.

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qualities. But, as the development of Inductive Logic itself would suggest, the significance of the conceptions "objective" and "universal" lies in Nature or Reality, rather than in a formal process of the mind.

In this sense of the term, therefore, I am suggesting that "to be reasonable" means exactly the same as the expression "to follow the reality-principle."

III. THE SIGNIFICANCE OF MORALITY

Reality has been distinguished above into "physical" and "social" facts, and it has been maintained that real life means, for a civilized member of a group, certain social conditions as well as physical laws. Among these social conditions are what are called *moral* laws or regulations. What is the significance of these?

If it were possible to conceive of a human being who lived completely by and for himself, having no relations with any other living creature, it would be meaningless to apply moral predicates to his behavior. It is only within the setting of, and with an implied reference to, some group or community that the conduct of any individual can be described as good or bad, right or wrong. The existence of such a setting or reference is presupposed in the very fact of moral judgment. As Mill points out,

> The social state is at once so natural, so necessary, and so habitual to man, that, except in some unusual circumstances or by an effort of voluntary abstraction, he never conceives himself otherwise than as a member of a body.[1]

It is true that a distinction is sometimes drawn between those actions of an individual which have social references and those which affect the individual alone. But it is easy to show that the distinction is merely one of convenience. There is no conceivable human action which may not, from its context, acquire genuine moral significance. Even a cough

[1] *Utilitarianism*, chap. iii.

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or a look might on occasion be immoral. It is the social coloring of the action which determines its possession of moral worth. The significance of moral judgment is invariably bound up with some social reference or setting.

It seems, in fact, that the possibility of social life, whether the society in question be a family, a tribe, a village community, or a great civilized nation, depends on the acceptance of certain restrictions or regulations of behavior on the part of the members of the society. Socrates pointed out, long ago, that even a band of robbers could not maintain its existence as a body unless the conduct of its affairs were subjected to certain regulations accepted by each member. He remarks:

> For if they had been perfectly evil they would have laid hands upon one another; but it is evident that there must have been some remnant of justice in them, which enabled them to combine.[1]

In other words, the essential thing about conduct to which moral predicates are applied is the tacit reference to the social setting within which it occurs.

The significance of morality may be shortly indicated, then, in this way. Human beings who live in groups are necessarily subjected to certain restrictions. They cannot gratify each impulse they may feel, as it arises. It is in their own interest, even as individuals, if such an expression has a meaning, to conform to the moral restraints, the taboos, the customs, of their group. Obedience to these is indeed the condition of the very possibility of both social life and individual security.

IV. STATEMENT OF THESIS

If the above be accepted, it becomes legitimate to regard moral regulations as part of "Reality" in as vital a sense as are physical laws. They introduce a complication, as it were, into reality. At a certain stage of complexity in the evolution of life, the stage where social life has been developed in some form, reality can strictly be said to include the moral regulations upheld by the group in which one lives.

[1] *Republic* of Plato, 352 C.

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Now it has been shown that to follow the reality-principle is the condition of survival for the organism, and that to follow the reality-principle is the same as to be reasonable. Since conformity with the tenets of morality is a necessary implication of "to follow the reality-principle," to conform to the tenets of morality is likewise the same as to be reasonable. To be moral and to be reasonable are, it seems, essentially the same thing. The reasonable person obeys the regulations of his group in exactly the same way, and from exactly the same capacity, as he conforms to the physical facts and laws of reality. Such is the thesis I would maintain.

When it is claimed that reality includes moral regulations, it should be remembered that the real has been distinguished from the actual, according to Hegelian usage. The bearing of this on social reality is crucial. It means that the actual moral customs and conceptions in a community, its moral currency, as it were, are partly real, a stage on the road to the real. They are not to be regarded as so much irrelevant lumber, to be swept aside by the social reformer as useless or antiquated. They are, on the contrary, the tools which he must use, the instruments by which his reconstruction, his improved or more reasonable formulation of social reality, can alone be achieved.

In this sense, then, it is maintained that to be moral is to be reasonable, that is, to follow the reality-principle.

V. RELATION OF THESIS TO SOME ETHICAL DOCTRINES

The conclusion which has thus been reached, it will be noted, is no more than a novel interpretation of the ethical doctrine of Kant. In Kant's view there is also the closest relation between the moral law and reason. Kant holds that the moral law, in fact, is the law of our own nature, *in so far as we are rational beings*. He shows that it is Reason which inflexibly ordains the precepts of morality, and that the command of duty is binding on all rational creatures as such, categorically or unconditionally. The moral law is neither

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the product of experience nor the reflection of some pattern or example. It issues from reason itself, and is implied in the very conception of a rational being.[1]

It may be recalled, too, that in Spinoza's system there is the closest correspondence between the successive stages of the moral life and the successive stages of knowledge. Indeed, from one point of view, morality and knowledge are identical for Spinoza. "Will and understanding," he writes, "are one and the same. . . . . A particular volition and a particular idea are one and the same."[2] Moral progress, for Spinoza, means intellectual progress.

To go still farther back, the thesis I have maintained brings out the basic truth which underlies the Socratic identification of knowledge and virtue. Just as in Kant and Spinoza, in Socrates too ethics and metaphysics are very closely united. Socrates meant by knowledge the perception or appreciation of reality, the knowledge, as Fouillée writes, "of the real and absolute worth of things." It was what reason enables a man to detect of those social or moral conditions which form an integral part of reality. From such a standpoint moral action is in exactly the same category as action conforming to the physical conditions of reality. Both are the expression of reason or knowledge in a particular sphere.

Our thesis suggests, too, a way of appraising the significance of the antithesis between Nature and Convention in morals. That antithesis goes back almost to the beginnings of speculative thought, among the Greeks. It occurs, for instance, in Democritean physics. It was specially emphasized by the Sophists. Aristotle himself distinguishes natural and conventional justice, in a famous passage in the Fifth Book of the *Ethics*. What, then, is the significance of a conception so persistently held?

It is, I believe, the implicit recognition that moral regulations, or social conditions, are something superimposed, as it

[1] *Fundamental Principles of the Metaphysic of Morals*, sec. 2.

[2] *Ethics*, II, 49, cor.

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were, on physical nature or reality. They constitute an additional structure, bound up with the emergence of common or group life among men. For that reason it becomes tempting to stress their difference from those features of reality which seem to be there from the beginning, so to speak. In this way the antithesis of Nature and Convention can be readily understood.

The history of the antithesis, too, serves to bring out very strikingly the relation of reason to morals. For in Stoicism, where it again occurs, nature meant no more than reason itself, the universal element in man, the "good sense" which Descartes attributes to mankind at the beginning of the *Discourse on Method*. Further, the Law of Nature, the Jus Naturale of the Roman Jurists, the Law of God in Hooker and the Schoolmen and Canonists, even the International Morality of Grotius and Pufendorf—all of which are the historical descendants of the early conception of natural justice—represent, as the English jurists Bryce and Pollock insist, a conception of ideal justice, founded on reason. "Natural" justice, we may say, is an ideal, an ideal by reference to which actual or conventional regulations are to be tested. It is, in other words, that which reason proclaims as morally real and necessary, the *Natur-recht* of German Jurisprudence.

These, then, are some points of contact between historical ethical doctrine and the thesis maintained above.

VI. APPLICATION OF THESIS TO ETHICAL PROBLEMS

The historical support I have requisitioned is, it must be admitted, attended by certain drawbacks. For the theories of Kant, Spinoza, Socrates, are obviously open to much criticism, which it would seem must apply equally to the present thesis. It will be convenient, therefore, to resume now the discussion of the thesis itself, and to bring out its significance in the light of such criticism as has been offered.

a) It might be urged, at the outset, that it is arbitrary to speak of social conditions, or moral regulations, as essential to

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the possibility of group life. For even the slightest glance at the history of mankind shows that social life has been maintained under the widest possible variety of moral regulations. Customs and laws have differed, in different groups, in the most bewildering fashion, as the works of Hobhouse and Westermarck testify. How, then, is it justifiable to speak of moral laws, analogous to physical laws, and to hold that it is the function of reason to grasp both? Physical laws, we may admit, are fixed and definite. But what is there fixed in the moral codes of men?

It may be pointed out, in reply, that the variety of moral codes in different societies *is* paralleled by a variety of intellectual or scientific conceptions. It is permissible to hold, nevertheless, that there are physical laws, real properties, in the world, however imperfectly we may have appreciated them: and it should be permissible, in the same way, to hold that there are moral laws, however imperfectly we may have appreciated *them.* From the standpoint of our thesis the meaning of moral, it should be remembered, is "essential to the possibility of social life." Kant speaks of "the bare form of universality," a conception which I interpret in the same sense. Now if, among the various moral codes which have prevailed, we can detect certain common, fundamental regulations, we can point to these as the kind of moral laws we have postulated. They will be as strictly objective and universal as physical laws.

But, it will be asked, *are* there any moral regulations of this kind? Are there any conditions without which it is utterly impossible for social life to be maintained, anywhere, at any time?

I believe that there are. If everyone were permitted, for example, to kill other people whenever his impulses prompted him to do so, it is clear that social life would not be possible. Hence we can safely say that the regulation which forbids promiscuous murders in a community is a moral law. No

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instance can be adduced of a group anywhere, at any time, which permitted promiscuous murders and survived. Similarly, the strongest impulses of all in men are sexual ones. They are, too, the least amenable to regulation in conformity with the reality-principle. Yet on biological and other grounds it is imperative for the group to impose some degree of restraint on the gratification of these impulses on the part of the members of the group. The history of morals shows, indeed, as we expect, that some kind of sexual restraint has invariably been practiced by all groups. The variety of their marriage customs may be very great. A man may have several wives, or a woman several husbands (e.g., the Nairs of the Malabar Coast), and the methods of regulating sexual impulses may vary from time to time in the utmost degree. But the fact of sexual restraint is a universal, that is, reasonable, necessity of social life, and a moral law in the sense required. That it is fundamental and of the first importance the popular identification of morality and sexual restraint clearly indicates.

Moral laws do exist, then, and comprise those conditions which are essential to the possibility of social life. The variety of moral regulations which the phenomenology of ethics displays has, too, another significance. It reflects the different conceptions of social life which have prevailed in different times and places. Since to formulate moral laws represents the attempt of reason to discover the essential social conditions of life, and reason itself is a developing capacity, it is only natural to find that the conception of these social conditions changes, or, as we say, progresses. The conditions I have specified, for instance, are conditions essential to even the lowest form of mere physical maintenance. But there are higher forms of social life, forms in which cultural achievement is sought, and the moral regulations essential to such forms of society are more numerous, more varied, and more complex. It is, however, the same capacity of reason throughout which seeks to discover and formulate these

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regulations, working with the same fundamental tool of integration or synthesis.

If, then, as I suggest, the moral laws signify those conditions of social life which are essential to its maintenance and progress, we can interpret the variety of moral regulations found throughout the history of ethics as a reflection of differing degrees of reason, as expressions of varying conceptions and varying attainments of well-being on the part of different groups. Such variety does not make the universality or objectivity of moral laws impossible. Morality, as essential to social life, is real, objective, and universal, however much the attempts of reason to formulate its tenets may vary in detail at different stages of man's evolution.

b) It might be urged, in the next place, that the interpretation of morality which has been suggested is "naturalistic," that, in other words, it reduces to the level of mere self-interest, expediency, natural growth, something which is felt to be beyond analysis, to be intrinsically self-sufficing, to be possessed of absolute worth in its own right.

In reply to this it must be insisted that the existence and maintenance of social life, on the present view, are not by any means to be regarded as questions of expediency, in the narrow sense. They rest rather on the ultimate facts of human existence itself. They follow, we might say, from the nature of the life-impulse. It is not simply useful, or desirable, or expedient, that men should live in groups and develop culture or civilization. The life-impulse is such that they cannot realize themselves otherwise. It is a commonplace of reflective ethics, for example, that a social setting is the indispensable condition of individual development. Great metaphysical systems have indeed been based on the admitted fragmentariness of the individual self. Hence whatever moral regulations are essential to the possibility of social life are at the same time essential to the possibility of self-development. They cannot therefore be treated as questions of expediency. For they

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spring from the very roots of human existence, from the ultimate facts of human life. They are the inevitable outcome, we may almost say, of that persistent effort or striving after self-maintenance which is the only way in which the life-impulse can be described.

Our suggested interpretation of morality may be, therefore, "naturalistic"—no interpretation can strictly be anything else—but it does not impugn the sovereign value we may attach to the moral life. The conception of value derives, I believe, from the fact of life itself. The judgment of existence is not only a judgment of value, but the ultimate source of all values. The fact of life is the one datum, the one absolute reality, within which all phases of experience lie. The implications of the life-impulse can only be found in the patterns of its working. The moral struggle is a phase of this pattern, probably the most important phase of all for the understanding of the pattern. It can be justly said, therefore, to possess absolute value, or intrinsic worth; for the conception of value itself has meaning within the pattern of the workings of life, and within that pattern alone.

The nature of life is such, too, that it is permissible to speak of "lower" and "higher" forms, as I have done above. For those expressions signify varying degrees of complexity. If it seems inadequate to regard "culture" or "civilized achievement" as merely more complex social conditions, it may be added that the argument rests on the conception of one fundamental biological end in life, that of material well-being or happiness. The primary biological necessity imposed on the organism by the conditions of reality is, I take it, the control of stimulation. To succeed in this task a nervous system has been evolved, through which the mental apparatus works. Relative success in the control of stimulation is indicated by "pleasure," as Aristotle himself showed. We may speak, therefore, of the end or goal of life as the winning of happiness, if we understand by the term some such biological implication

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as has been outlined. However complex the conditions of social life become, for any one group or community, the end or goal remains the same; and it is with reference to a criterion of this nature only that the expressions "lower" and "higher" have been used above.

c) It may be asked, next, if our thesis is no more than a novel interpretation of Kant's view, how does it avoid the criticism to which that view has been subjected? Kant, it will be remembered, regards the ethical as the rational, but he opposes reason to experience, and the truly ethical or rational is for Kant, strictly, something utterly removed from the world of actual practice. As Hegel showed, it remains an empty form or ideal. Its maxim is mere universality as such, form without matter or content. Kant, it is true, introduces in his illustrations a content drawn from experience. But his right to do so on his principles is logically indefensible. Is our thesis not open to the same charge of "intellectualism" or "formalism?"

It avoids this implication because it does not rest on the same dualism of reason and experience. The rational and the actual, I have insisted, are not distinct worlds, but phases of one process. Universality has been defined as "essential to the possibility of social life," in its application to the moral sphere; and its meaning is thus bound up with the world of actual practice, with experience, with concrete life. As Mill himself points out, Kant's criterion of universality is valid only because it tacitly assumes the values of life and society. It is only within a setting or context of this kind that the argument is even possible. To hold, then, as our thesis does, that moral laws are those conditions essential to the possibility of social life brings out the fundamental significance Kant attributed to "universality," as the criterion of moral worth, but by no means involves a merely formal or intellectual view of the concept universality itself.

d) It may be noted, further, that the interpretation which was suggested above the antithesis between Nature and

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Convention in morals serves to elicit how far that antithesis is valid and how far it is misleading. It is a valid antithesis in the sense that natural and social reality are distinguishable. But it is not valid in the sense that moral regulations are arbitrary, and could quite well be other than they are. Moral laws, it was shown, are the *essential* conditions of social life, and therefore objective or universal in the legitimate sense. The form which the antithesis took in the eighteenth century, with its contempt for conventional institutions and civilization, is thus seen to be an extravagance. It rests indeed on the historical fiction of a golden age in the past. The truer view is, I believe, the view that social life is the "natural" condition of man, as Aristotle held. Moral regulations are as "natural" as physical laws, and man discovers both by the exercise of the same capacity of reason.

These, then, are some of the applications of our thesis to problems which the history of ethics has specially emphasized.

VII. PSYCHOLOGICAL CONSIDERATIONS

There are certain psychological difficulties in the position I have maintained. The Socratic position itself suggests one of them, for the so-called Socratic paradoxes spring directly from the identification of virtue or morality and knowledge. It seems obvious that to know what is right or good is not necessarily to do it. If to be moral and to be reasonable are the same thing, then, why do people find it so difficult to be moral? Surely many quite reasonable people are by no means moral.

The psychological reply to this, in the case of Socrates, would seem to have been a basic assumption that all men always desire the good, and that voluntary action is invariably a choice of ends conceived as good. Socrates meant by knowledge, too, not a theoretical, disinterested intellectual process, but rather a comprehensive principle dominating the entire personality. But the crux of the difficulty which undoubtedly inheres in the Socratic position comes, I believe, from the

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assumption that reason and knowledge are fixed, definite, whole; so that a man may be said to be reasonable, with the implication that he must necessarily in all circumstances act with the maximum of reasonableness. On the view of reason which has been suggested above it is not something fixed in this sense. It does not reach its full stature at birth. It is rather a capacity which grows and develops, which can be graded according to its degree of complexity, its power of synthesis or integration, which frequently, however, breaks down, falling short of the ideal, the fullest reasonableness.

The psychological basis of this view is as follows. The impulses which are the springs of action follow at first the pleasure-principle, on biological grounds already indicated. To attain conformity with the reality-principle is a slow and gradual process, difficult to achieve consistently. But conformity with that phase of reality which is constituted by moral regulations is not in a different category from conformity with that phase of reality constituted by the physical world. The strength of psychical elements or effects in some people is so great that it overrides the testimony of physical facts. They are the victims, we say, of delusions, hallucinations, superstitions, or prejudices. In other words, they are not fully reasonable in respect to physical reality. Similarly, the strength of certain instinctive impulses in some people is so great that it overrides the testimony of moral or social facts. They become petty offenders or hardened criminals. In other words, they are not fully reasonable in respect to social reality. But in both cases the psychological processes are the same.

No comment is made here on the relative importance for the individual or for society of intellectual unreasonableness and moral unreasonableness. What is being stressed is that, at the stage of complexity in the development of life which marks the emergence of man, the life-impulse is characterized by a capacity which has been called reason, the capacity, namely, of controlling behavior in accordance with the demands

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of the real world, both physical and social. Indeed such a description corresponds to the essence of what is usually called free-will in morals. It is only in this sense that free-will has any intelligible psychological meaning.

From such a standpoint, then, there is nothing peculiarly inexplicable in the fact that some behavior is not morally perfect. There are differences in moral reasonableness, in moral stature or development, just as there are differences in intellectual stature. The functions of reason in the two spheres are exactly analogous. Whether the correlation of stages of reason in the two spheres is complete, and there is an exact correspondence at every step, I cannot undertake to show here. It seems generally agreed, however, that petty offenders, for instance, are usually deficient in intelligence or reason. McDougall, too, in his recent *National Welfare and National Decay*, refers to some experiments which actually bring out an exact correspondence between intelligence and moral characteristics. On the other hand, there is certainly a popular impression that many scoundrels are men of keen intellectual powers, though the proportion is probably small. I leave the question open, since the general analogy which I seek primarily to establish remains unaffected.

VIII. CONCLUSION

One final note is, I think, required. It might seem that the above theory of morals is inadequate, because it ignores any phase of that emotional warmth and intensity with which the moral sentiments are usually associated. If morality is reduced to certain objective conditions of social life, as cold and impersonal as physical laws, has it not lost something fundamental? How can a theory which omits to record the emotional side of morals be a complete account of the matter?

I believe that the emotional strength of the moral sentiments, and the peculiar sanctity which surrounds them, are explicable on certain hypotheses other than the one implied

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in this criticism. There are, for instance, biological grounds which make the emotional sanctity of morals inevitable. The survival value of moral regulations being as I have indicated, it becomes readily intelligible that an acquired social disposition of habit should be formed, in the course of time, and be endowed with great emotional intensity. Further, the close connection between morality and religion which the history of man reveals accounts for some of this warmth. The significance of the connection is that religion seems historically to have been the great instrument of social control. Even more important are certain psychological causes. Not only are moral regulations imposed on the growing child at the most impressionable period of his life (did not Jowett once remark that the origin of morality is in the nursery?), but they are associated invariably with feelings of tenderness or love, of authority or power, all rooted in the deepest springs of psychical life. Mill has shown, for example, with regard to Conscience, that

> in that complex phenomenon as it actually exists, the simple fact is in general all encrusted over with collateral associations, derived from sympathy, from love, and still more from fear, ... from self-esteem, desire of the esteem of others, and occasionally even self-abasement. This extreme complication is, I apprehend, the origin of the sort of mystical character which . . . . is apt to be attributed to the idea of moral obligation.[1]

Finally, the study of the earliest origins of group life, the primitive family or tribe or horde, suggests the possibility that the roots of the sense of guilt and sin in man are connected with psychological antecedents largely unconscious; those, namely, that belong to what is called the Oedipus Complex.

Speculations of this type are of course dangerously easy to multiply. But the cumulative evidence from biology and psychology makes it at least probable, I think, that the sanctity

[1] *Utilitarianism*, chap. iii.

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and emotional intensity of the moral sentiments can be justly interpreted on some such lines.

The thesis which has been maintained, then, in the present article is by no means incompatible with an acceptance of the unique strength and even sanctity of moral feelings. In general, it seems to afford a suggestive viewpoint from which the various ethical doctrines that are current can be understood and appraised. It is not, it need scarcely be said, a complete theory of the significance of morality. But it is, I believe, an illuminating conjecture, to claim no more, and it is free, as I have tried to show, from radical contradiction to either the empirical data or the theoretical constructions of the moral life.

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THE INSTITUTIONAL SETTING OF PLATO'S *REPUBLIC*

EDITH AYRES COPELAND

The assumption that Plato's writing was meant for all time and all mankind has naturally led to neglect of any dispassionate attempts to understand it from the point of view of the prejudices of his own time. We have read the *Republic* for what it had to contribute to our own theories of state, unmindful of the fact that our modern thinking, however traditional its phraseology, runs in terms of a modern institutional complex, and Greek thinking in terms of the Greek situation. We discuss Plato's abolition of private property not as a solution of the difficulties in which his own society found itself but as a scheme for organizing society in the abstract. Replaced in their original setting Plato's proposals take on a new meaning and conversely they throw light upon the conflict in Athens of social, economic, and political ideals.

The Athens of Plato's day was not the small, static, city-state with rigidly defined social classes which he proposed as an ideal. It was the metropolis of a growing commercial civilization, where the social distinctions characteristic of an older economy were presumably breaking down before the changed values of the new pecuniary order.[1] Within a few centuries Athens had grown from a poor agricultural town into a city with unsurpassed financial prestige, and the largest citizen population found in any of the Greek cities. The household economy characteristic of Greek tribes in Homeric days had here, as elsewhere, been replaced by (relatively)

[1] The principal secondary historical sources upon which the present interpretation is based are the following: Meyer, Ed., "Die Wirtschaftliche Entwickelung des Altertums," *Kleine Schriften*, Halle, a. s., 1910; *ibid.*, *Geschichte des Altertums*, Berlin, 1902, Vol. V; Beloch, *Griechische Geschichte*, Vol. III, 1, 2d ed., Berlin, 1922. The writer is indebted for many suggestions to Professor W. L. Westermann of Columbia University.

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large-scale production of manufactured goods for sale in foreign markets. The shipping business, while still highly speculative, was profitable enough to draw large investments into its development. The silver mines were being exploited. Private banks were growing up, for deposit and for investment purposes. Activities which were formerly on a non-pecuniary basis (for example, fighting) were becoming a part of the price system.

Under circumstances of this sort it is to be expected that the social standards of a predominantly agricultural economy should break down. Representatives of older aristocratic land-owning families accustomed to living simply—as did all the Greeks according to our own standards—doubtless came to be less and less secure in their social position with the opening up of new opportunities for wealth. The bankers and business men of the commercial age were frequently men from the lowest social classes, whose attention to business was unhampered by the demands of public life. They grew rich; and it seems probable that they attempted to establish themselves socially by spending their money with more display than was customary. Thus social position, and the standard of living on which it depended, would tend to become competitive rather than purely traditional. χρήματ' ἀνήρ was the catch word of the time.[1] This process must have been accelerated in Athens by the Pelopponesian war. In the early days of the war the plague which swept away about a fourth of the population probably brought about a general redistribution of property. Later the devastation of the land about the city, and particularly the cutting down of olive trees, forced many small proprietors to join the growing band of unemployed, while their holdings became concentrated in the hands of large land owners. The failure of the Sicilian expedition doubtless impoverished many of the wealthier families who had contributed to its outfitting. The traditions of the older aristocracy included heavy financial responsibilities toward

[1] Cf. *Kleine Schriften*, p. 110.

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the state, and in time of war they were expected to bear a large part of the expense of fighting. This in itself would tend to drain away the wealth of the more patriotic classes; while at the same time those who had an eye out to their own advantage would be able, as in every time of social disorder, to profit personally at the general expense. So there came about a conflict of social and ethical values—a general skepticism about the possibility of justice in a world where government had become notoriously corrupt, religion ineffective, and old social distinctions confused by the dominance of pecuniary standards.[1] In such an atmosphere the cobbler forcing his way into the class of warriors, or the warrior into that of legislators and guardians, becomes for Plato the type of philosophical injustice.

An important phase of the breakdown of old social classifications was the gradual diversification of economic interest among the citizens—the loss to the state as a whole of a genuine community of interest. This can perhaps be made clear by a contrast between the development of the institution of private property and that of the state. In the primitive Greek tribal states there were certain communistic elements. Land for the grazing of cattle was held in common by members of the tribe, and the spoils of war were divided (chiefs of course getting more than commoners). Later, when life was predominantly agricultural and the citizens had become a group of small landowners, cultivating the land themselves, the state still played a large and important part in the life of the people. It was not only a protection against the common enemy; it was an embodiment of the religious, social, educational, and recreational life of the time. The family was a significant unit of the state, which, according to tradition, at least, was itself based on common descent. In the earlier days nearly all the necessities of life were produced within and for the single house-

[1] The general iconoclasm and reformism of the time is summarized well by Barker, *Greek Political Theory: Plato and His Predecessors*. London: Methuen, 1918. pp. 75–82.

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hold. Land was the chief form of wealth, and, as it was generally handed down within the family, there tended to be a hereditary aristocracy. But wealth in such a relatively static society, recently emerged from a pastoral life, meant naturally greater responsibility for the common life. Just as the chiefs of more primitive tribes assume leadership and responsibility from which the common people are exempt, so in earlier Greek society the larger landowners were expected to furnish more elaborate equipment for war and to play a more important rôle in the state. There was felt to be nothing unjust or confiscatory about such demands. They were part of an economic régime in which private property rights had not come to hold the important place they later achieved. It was this sort of economic life which characterized the period during which the Greek political ideals familiar to us were being formulated. In later days, Sparta differed from the more typical Greek cities only in being a case of arrested development. Sparta actually retained a little more of its primitive communism than did the others; but in all the Greek city-states, throughout antiquity the theory persisted that the state was entitled to the wealth of its members. It was an integral part of Greek political thought—a part of the Greek institution of state. Hence it was natural that Plato should find much to approve in Spartan institutions, embodying as they did the ideals which survived in Athenian leisure-class tradition.

Gradually, however, with the growth of the Piraeus as a commercial port, it became more and more possible to invest in ships, in mining silver for export, and later in small "factories" for the fabrication of articles of trade. As investment opportunities grew, it is only natural that interest in voluntary contributions to the state should lag. What were thought of in an earlier period as natural obligations to the state became arbitrary and unjustified taxation. In other words the institution of private property had developed in such a way as to conflict with the institution of state. It is necessary to

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think of property in more than a legalistic sense. Before the days of Athenian commercial supremacy, the owner of precious metal might bury it in the ground for his heirs to dig up; but he could use it only in a limited way in the winning of further wealth. The opening up of new investment opportunities, however, created in effect a new property right, and in the exercise of this right private owners came more and more to regard their wealth as belonging to them personally rather than to the state. Rich "capitalists" began to conceal their fortunes in order to avoid having them taxed away by the state. At the same time, since many things formerly on a non-pecuniary basis were being included within the price system, state expenditures were rising. With the development of the technique of warfare, armaments and battleships were becoming more expensive; the requirements of trade in competition with merchants of other cities necessitated a more and more elaborate naval equipment. Faced with an increasing need for funds and increasing difficulties in procuring them, the state pursued a policy of confiscation and extortion wherever this was possible.[1] Thus in many ways the interests of the state came to conflict with those of private individuals. In protest against this lack of common interest Plato advocated the abolition or modification of private property and rigid limitation of foreign trade.

His ideal for the separation of economic and political affairs may also be interpreted as distress at the complications of his own society. The problems confronting such a state as Athens were really appalling. For example, there was the difficulty of the grain supply necessary for an urban population. The grain trade had grown up gradually as a result of private initiative. As Athens had grown in commercial importance more of its productive energy had gone into the fabrication of pottery, arms, clothing, and the like, and less into agriculture. Its

[1] Some idea of the extraordinary methods of public finance used by Greek states in Hellenistic times may be gained from the pseudo- Aristotelian Economics.

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overflow population was taken care of, not by colonization, but by the gradual development of an exchange economy in which raw materials were imported and manufactured goods exported. In time the city had come to be dangerously dependent upon a regular supply of grain. This meant, of course, pressure on the government to keep open and safe by naval supremacy the chief grain routes. And since the grain trade, though in private hands, was affected with a public interest, it meant also the prevention of monopolies and other such abuses of a helpless public by profiteering dealers. These were problems for which there was no ready-made solution. Greek political ideals had grown up at a time when the state was in large measure economically self-sufficient. As the economic situation changed, however, it became more and more necessary for the state to interfere in private enterprise; and as is to be expected, it dealt with newly-grown evils piecemeal (from our point of view) without much appreciation of economic tendencies. Naturally one measure of interference required another and the state became gradually more and more involved with commercial and financial problems. Many of its regulations worked out badly without doubt. Some probably defeated their own ends; others placed undue restrictions on private enterprise. To correct these abuses Plato advocated a complete and thoroughgoing laissez faire. One cannot help wondering whether this attitude may not have been the prevailing one among the more influential men of affairs in Plato's day for the reason that some of them suffered personally when the state attempted to regulate business in the interests of poor consumers.

But in spite of the enormous risks with which commercial enterprise was laden, arising partly from what seems to the modern mind a wholly inadequate protection of property by the state, commerce grew steadily and large fortunes were made. And with the growth of personal fortunes there came a more than proportionate contempt for the worker.

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For the accumulation of capital available for investment in what was then large-scale enterprise made it possible to import and train slaves to work beside or in place of free laborers in the small workshops. The importance of slaves in Athenian economy has probably been exaggerated by people who wished to attribute the artistic achievement of the ancients to their freedom from economic concern, or to demonstrate a straight-line development of morality from earliest times to the present; but after allowing for this prejudice, and for the zeal of historians in exposing it, it seems clear that the importation of slave labor must have had considerable influence in depressing the standards of workers in general. The Athens of an earlier period, the period just after the Persian wars, did not look down upon the worker. Typically, citizens themselves were handicraftsmen of one sort or another. Slaves, in so far as they were used at all, were used chiefly in the household. In the small shop of the artisan they were helpers or fellow-workmen, working shoulder to shoulder with their masters. The Athenian workman owned his home and little plot of land; he worked for himself; and if he was not rich, neither was he poor. There was in fact no distinction between rich and poor in the modern sense, defined as it is now by widely divergent standards of living and the power of a few, by their control over industrial capital, to regulate the lives of many. There were no unemployed. But when, with the development of foreign markets it came to be profitable to manufacture on a relatively large scale, to rent out slaves by the day as laborers, and to import large numbers of slaves for industrial purposes, it doubtless became less and less respectable to work. Enterprising handicraftsmen turned their little profits into buying more slaves, and thus became owners of small factories, and those who were less fortunate may have tended to drift into the class of those who worked out by the day.

Under these cirumstances it is natural that working conditions should have changed. The Athenian citizen, even though

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an artisan, took a great deal of interest in politics. He was subject to a certain number of days' political service to the state, which in the early days he seems to have been quite ready to give. He took many days off from his work to have a part in the various religious festivals. His whole life seems to have been leisurely and dignified. But with the influx of industrial slavery, working conditions must surely have changed. It is only reasonable that factory foremen should have required as long a day's work as possible. Gangs of workmen bossed by overseers became more usual, and possibly such customs as the enforcing of silence during working hours, and other humiliating conditions grew up.[1] Plato's insistence on a minute division of labor would indicate that work had become pretty much specialized in his time. It is easy for us to assume that, because in those days there was no machine industry, technology was therefore at a standstill. On the contrary, the advance in specialization must have been rather rapid—enough so that older craftsmen may have felt a sort of longing for the days when what they considered the "whole job" was not done by several workmen, when production was on order only, and the workman worked as much or as little as he pleased, and almost nobody lived an entire life of leisure.[2] In the fourth century, work had become relegated to a particular class—the poor. Small independent artisans, like little independent tailors of today, had perhaps to work long hours in order to compete with the better organized shops. Class conflict had become a conscious issue, and unemployment a serious problem. Plato, like other members of the leisure class, had come to despise the worker; so he keeps his ideal

[1] Plato's notion of having no two slaves of an establishment speaking the same language would automatically operate against the normal give and take of working life; *Laws* 777. Of course nothing approximating our own factory system is to be expected at Athens at any time, unless possibly we could compare their small clothing shops with our own "sweat-shops" which are chiefly distinguished by their backwardness in adopting machine methods.

[2] An interesting contrast between the handicraftsmen of small and large cities is to be found in Xenophon's *Cyropaedia* viii. 2.5.

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citizens from productive effort. And not seeing clearly what had brought the new rich and the new poor, he is satisfied to put the blame for class antagonism on the inequality of wealth. There were to be neither rich nor poor in his ideal state; for, as he says, a city divided into rich and poor is not one city but two.[1]

The influence on political issues of the appearance of economic classes must also have been considerable. Formerly there were concessions to the poorer classes; but actually politics became more and more a professional game played by adventurers in their own personal interests. Responsible citizens ceased to make it their first serious occupation. In its foreign relations, too, the state must have suffered from this division of interest. The growth of unemployment was perhaps in part responsible for the creation of a professional army, and for some of the endless fighting of the post-Pelopponesian war period. No doubt the wars of this period were in part merely a carrying on of traditional city-state patriotism.[2] But in the older days the suffering inflicted by war as well as the advantages of peace (considerable in an agricultural economy) were fairly evenly distributed among all the citizens. Now, however, there had grown up a class of merchants and dealers of one sort and another who reaped larger rewards

[1] *Republic* 422.

[2] This seems to be the point of view taken by Kurt Riezler in his sketch of the conflict between the state and business enterprise (*Über Finanzen und Monopole im Alten Griechenland*, Berlin, 1907). According to the present view he would seem to assume too readily the persistence of tradition. Doubtless an institution like the state about which much had been written would tend to preserve its own "Lebenstrieben" to some extent, especially when education was largely centered about political activity; but it is the nature of institutions to evolve, and consequently it is as necessary to account for lack of change as it is for any other particular development. In the present instance it seems worth while to inquire whether, if the ideals of conquest and absolute supremacy which Riezler describes as fundamental to the Greek notion of city-state persisted unaltered, as he seems to assume (pp. 72–73) from the tribal period when they arose to the later democracy, it was not perhaps to the interest of certain groups that they should so remain. Of course, from the point of view of traders in the Hellenic world generally, peace and political combination would have been highly desirable; but not from the point of view of individuals in the various cities who hoped to make quick fortunes at the general expense.

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in time of public distress than in time of peace.[1] In ways of this sort political issues had come to be so much bound up with economic interests that there seemed to Plato no solution except to deliver government into the hands of a specially trained group whose personal interests could not possibly conflict with those of the state as a whole.

It seems clear that Plato's sketches of the ideal community were specifically directed against what struck him and his contemporaries as the most serious problems of the day. They were inspired by distress at the turn affairs were taking and not merely by desire to round out a theoretical system. They were protesting specifically against a large and growing society in which social distinctions were breaking down; against the loss of common interests among the citizens in a state where a new insistence on private property was conflicting with the old allegiance to state, an insistence which extended to wives and children as well as other forms of property; and most important of all they were protesting against the growing confusion between the life of the state as a whole and the economic interest of its various individuals. If it was written for all time and mankind it was at any rate directed against a particular time and people. And the corrections which he proposed were largely taken from his own time or that just previous. His models were indeed the Sparta and Crete of theory, not of practice, and the ancient Athens of tradition rather than history.[2] But much of what seems to us on first

[1] The best-known citation on this point would probably be Lysias vs. the grain dealers.

[2] Jowett, in the introductions to both *Republic* and *Laws*, gives a fairly full and detailed account of Plato's borrowings from Sparta and elsewhere. It is significant to note, however, that it is not simply details but rather the fundamentals of social organization which Plato takes over. The Spartan régime was one of status. It was one in which the state was exalted above the institution of private property, in which economic activity was discouraged, and in which the perpetuation of the status quo was effected by a highly standardized, state-supervised system of education. Plato's emphasis on the teaching of philosophy in addition to military training for youths of the governing class rather obscures the point that his scheme of education implies not the free enterprise of Athenian philosophers but the rigidly bound system of Sparta. His philosophy for youths is not an unfettered search for truth but a kind of compulsory state religion.

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thought daring radicalism is from the point of view of the time profound conservatism. In an age of struggle between the new contractual relationships and the old relationships of status, Plato's emphasis is upon status. Changelessness rather than growth is the ideal of his social philosophy.

It will perhaps give point to the contention that social writings are best understood by reference to their institutional setting to indicate more specifically some of the contemporaneous ways of thinking which Plato fails to criticize because he takes them so for granted. It is clear that certain of the prejudices of his day which he incorporates in his pictures of the ideal society do not entirely harmonize with other parts of the picture. In fourth-century Athenian prejudice, for example, the best life was conceived as a leisurely, cultivated life. But as Edward Meyer has pointed out,[1] this ideal was the product of a highly developed economic system in which it was possible for certain members of the community to live entirely on the income of their capital, thus being free to cultivate the scholarly arts. It was a product of city life, and Athens in building up her tradition as a center of culture drew not merely upon her own citizen body, but upon the whole civilized world. Such a degree of culture would have been impossible in the small, isolated, economically primitive, agricultural communities of the *Republic* and the *Laws*.[2] Again, Plato's feminism is distinctly a product of his own age, an age of growth and development which made it possible to criticize the present in the light of a possible future.[3] The same economic develop-

[1] *Geschichte des Altertums* V, § 921.

[2] At any rate, the type of culture existing at Athens would have been impossible, characterized as it was by free initiative, critical insight, range, and diversification. There is of course nothing improbable about the existence of a leisure class in economically static society, but (in the modern prejudice, at least) it would tend to become a priesthood rather than a group of philosophers, conserving what passed within the cult as *the truth*, rather than creating new truths.

[3] For an account of contemporaneous discussions of the woman problem see Barker: *op. cit.* p. 76.

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ments which were straining the status relationships between man and state were straining also the (status) relationships between woman and man. It was an expression of the conflict between a type of social organization which allowed for change and growth and one which assumed the permanence of tradition. Plato incorporates this protest against tradition in his provisions for a régime based on the sanctity of tradition. And then, again, his contemptuous attitude toward the worker and his work, which seem in Athens to have been a part of the growth of wealth and poverty, is somewhat inconsistent with a repeated insistence upon doing away with the prestige which the ownership of wealth would ordinarily bring. A part of the institutional milieu in which he lived he seems simply to take for granted, while other parts, inseparable from the part assumed, he is quite ready to reject.

Reference has already been made to the institutional conflict between the Greek state and private property. It is difficult for us, so thoroughly has our own theory of state adapted itself to the support of private property, to understand how natural it was for Plato, in espousing the the cause of the one, to condemn the other. The Greeks, like us, were peculiarly conscious of their political institutions. As with us, the formal agencies of control were adapted to a different economic situation than the one with which it presently became necessary for them to cope. And the new economic forces were still undefined. There was a general feeling that something was wrong, but no agreement as to the remedy. Some, as in our own time, were for a loosening of the old bonds to make way for a more inclusive type of political organization. Others, like Plato, were for defense of city-state at any cost. So, when he rejects the principle of private property it is not because he has achieved a critical detachment from the institutions of his own day but because he assumes so thoroughly the orthodox theory of state. A further indication of this is his explicit assumption of war. If, indeed, he makes

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remarks about military preparation as a method of avoiding it, about the evils of conquest, and the irresponsibility of leaders who plunge the state into needless strife, it is only because he is fearful about the survival of Greek institutions under the strain of too much foreign contact, because he is excessively nationalistic, not because he regards war in itself as an evil. The alternative of forming peaceful alliances with barbarians and of showing tolerance for different cultural ideals would have been unthinkable for him. Imperialism he rejects. It was a product of the commercial age. It was too much bound up with the economic activities of merchants and traders, too little consistent with the traditional ideal of a small, independent, self-sufficient state.

Plato accepted entirely the technology of his time, while objecting to certain concomitant commercial developments. Apparently he did not see that altered business practices had resulted in and from altered material processes. He did not realize that to destroy the overseas markets for manufactured goods would be to destroy the possibility of such minute specialization. Specialization in technological processes is one of the things upon which he insists most strenuously. The principle of the division of labor is for him the definition of justice. In the field of technology he seems to regard the degree of specialization reached by his own time as something fixed and universal. But in *business* as he describes it, in the *Laws* he looks askance at the current amount of specialization. A certain number of retail traders will be necessary in the state, he admits, but the specialized business manager, not himself a handicraftsman, will not be tolerated.[1] He makes it very clear, also, that importers and exporters will be unnecessary,

[1] "Let this, then, be our first principle in the state: No one who is a smith shall also be a carpenter, and if he be a carpenter he shall not superintend the smith's art rather than his own, under the pretext that in superintending many servants who are working for him, he is likely to superintend them better, because more revenue will accrue to him from them than from his own art; but let every man in the state have one art and get his living by that" (*Laws* 846 f.).

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since the state will be as far as possible self-sufficient. To the modern way of thinking it seems clear that the technological specialization which Plato assumed would scarcely have been possible without a corresponding development of business enterprise, and commercial interdependence at least among the various city-states. Specialization requires a wide market. Without the highly organized overseas trade characteristic of fourth-century Athens there could have been no such division of labor as then existed. The bulk of Athenian imports were raw materials for which were exchanged manufactured foods of one sort and another. It is clear that this degree of industrial development could never have been maintained in the much smaller, poorer states of Plato's construction, which permitted no economic interdependence with the rest of the world. Minute specialization would hardly be consistent with the simple tribal communism which he hypothecates.

The institutional assumptions involved in any social protest are interesting because of the light they throw on the importance of things which the writers themselves are not in a position to evaluate. Thus the dominance of handicraft technology in Greek civilization becomes evident, not from the fact that Plato insists upon it, but from the fact that he thinks in terms of it. One thing worth noting is his persistent and uncritical use of analogy from the industrial life of his time, as if he regarded the analogy as holding good without correction in the sphere of social phenomena. The good state for him is a product of the "art" of statesmanship, and the various classes of the state are woven together into one "smooth and even web."[1] Still more significant is his discussion of creation developed in the Timaeus. Here, it is evident, creation is not thought of in terms of older religious explanations as a process of generation or the issuing of fiats and decrees; God is only rarely spoken of as the father or the king. Rather he is the divine artificer; and the world is constructed according

[1] *Statesman*, 311 and the whole dialogue.

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to a certain model or architectural plan. These expressions are not to be passed over as being simply evidences of Plato's poetic genius. They are found elsewhere in the thought of the time[1] and for a handicraft type of culture they are a natural mode of speech. They illustrate the fact that certain economic institutions may have so shaped the institution of language that they are assumed by the very categories of speech—that one can hardly use language at all without assuming them.

Somewhat less subtly Plato seems to assume a permanent social stratification of society. With all his qualifications it is plain that the actual social distinctions of his day among citizens, non-citizens, and slaves correspond in one-to-one fashion with the social classification of the *Laws*. In the *Republic*, guardians and their auxiliaries are generally classed together, and both are contrasted with the artisans and traders. These social divisions are so much a matter of course with Plato that he carries them over into psychology. The soul, as well, is made up of various faculties in which different grades of excellence (i.e., different prestige values) inhere. In the passage where the three social classes, guardians, warriors and traders, are made to correspond exactly with the three mental compartments, reason, passion, and desire, it is clear, not only (what has often been noted) that there is an application of mental classifications to social theory, an anthropomorphizing of society, but also that there has been a reaction of the invidious social distinctions found in actual life upon the theory of the soul. Social institutions are so absolutely assumed that they constitute a model for scientific and philosophical research. The exercise of reason is obviously a leisure-class pursuit, and a base desire for gain is the motive to economic activity. In the good state, as in the good individual, the several classes (faculties) know their places and keep them.

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[1] E.g., Xenophon *Memorabilia* iv. 6–8.

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THE FUNCTIONAL VIEW OF LEGAL LIABILITY

MAURICE FINKELSTEIN

The complexities of modern society have effected a revolution in the theory of legal liability. The old moral and metaphysical conceptions are being replaced by a sociological point of view. And the words themselves tell something of the story. Sociology is a statistical science, studying with the impersonality of an insurance company the facts of society and the functioning of the social machine. Its suggestions to the law are based as far as possible on a knowledge of the realities of modern social and economic life, and these suggestions, if they are not in themselves intrinsically moral in the older sense of the word, at least provide the means for the realization of the crystallized moral sentiments of the community.[1] On the other hand, the older theories of the law alternated between excessive timidity and quixotic moral ardor, both attitudes being couched in unassailable metaphysical principles, and yet both proving deleterious to the practical development of legal theory.

All sociological theories of jurisprudence recognize at the outset that law is only one of the means of social control and not necessarily the best. There are many cases when physical coercion is both inevitable and indispensable. Also there are numerous instances when it is the part of wisdom to intrust social control to the various moral and psychological forces of the community. In primitive societies, where the collective moral consciousness was powerfully developed and was reinforced by a system of superstitious taboos, physical pressure was scarcely needed.[2] In those societies *fas* and *boni mores* were unaided in the control and regulation of social life. However, with the break-up of the primitive societies, brought

[1] Cf. Kohler, *Lehrbuch der Rechtsphilosophie*, Book I.

[2] Cf. Levy-Bruhl, *Les Fonctions Mentales dans les Sociétés inférieures*, chap. ix.

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about through a combined economic and psychological evolution, the need for external coercion by a central government is quickly felt. The Book of Samuel contains a beautiful illustration of the manner in which this transformation was effected among the ancient Hebrews.[1] To be sure, a great part of this new social coercion is directed toward the maintenance of public peace and order. But as we are not here concerned with the development of criminal law, it is sufficient for us to emphasize the origin of social interference in the commercial and industrial life of the community. This social coercion is needed to supplement *fas* and *boni mores* in the work of social control.

The question for the modern jurist is to what extent will the law take over the work of *fas* and *boni mores* and to what extent will it supplement their sanction. Such a question cannot be solved by a priori deduction from basic principles—it calls rather for continual legal adjustment with the physical organization of the social structure. This adjustment, it may be added, does not tend necessarily in the direction of socialism nor the direction of individualism. The evolution of society escapes both of these all-too-simple formulas. In many respects primitive societies are more communistic than those of the present day; while in others there is a noticeable development of the principle of physical social coercion.[2] The progress of the law, which is an integral part of the evolution of society, cannot avoid that multifarious adjustment peculiar to social phenomena.

In the history of law we see a constant attempt to maintain simple theories of liability in the face of growing complexities in the social system. Thus it used to be said that from the

[1] See I Sam. 1–9, "But the thing displeased Samuel, when they said Give us a King to judge us. And Samuel prayed unto the Lord. And the Lord said unto Samuel Hearken unto the voice of the people in all that they say unto thee, for they have not rejected thee, but they have rejected me, that I should reign over them."

[2] Cf. Durkheim, "Définition du Socialism," *Revue de Métaphysique et de Morale*, October, 1921.

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point of view of delict at least no man will ever be obligated unless he is also at fault. Now the idea of culpability has proved completely unmanageable in modern law, and indeed even in the common law it could not always be maintained in the face of the practical social necessities. Thus a master was always liable for the torts which his servants committed within the scope of their employment. It was of no consequence for the master to show that he was extremely careful in the selection of his servants, and that he was personally free from fault. Beneath the rationalization of the common law, a sharp eye can discern an economic theory of liability. It has been well said that we should probably never have heard of the doctrine of *respondeat superior* if servants as a class were solvent and able to respond in damages. Only by means of a series of legal fictions could the reality of economic liability be reconciled with the philosophic notion of no liability without fault. These fictions are being completely abandoned in recent times, and with the legislatures constantly introducing Workmen's Compensation Acts—which arbitrarily impose damages upon the employer—and the abrogation of employers' defenses to personal-injury actions, liability without fault has become established in modern law. In short we are coming to substitute a system of social insurance, administered according to the principles of sound economics, for the doctrine of culpability, which though superficially more moral actually leads to immoral social consequences.[1]

This insurance theory of liability is destined to receive extension to fields other than workmen's compensation. We might cite for instance automobile traffic in a large city. A great many accidents are practically unavoidable in urban centers. Public policy has been gravitating more and more toward holding the automobile owner responsible, regardless of the metaphysical division of fault between him and the

[1] The fact that Workmen's Compensation Acts imposed liability without fault led to their being held unconstitutional, notably in the famous Ives case.

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pedestrian. The owner, in turn, has generally met his responsibility by taking out an insurance policy. On the other hand, actions as against insolvent owners and penniless taxi-drivers are not unknown. In the case of taxi-drivers their recklessness led insurance companies to refuse to insure them, and their notorious insolvency prevented any recovery against them. The result was that they were permitted to cause a great many accidents, either through negligence or otherwise, without the sufferers having any redress. It is to remedy this state of affairs that a ruling was recently made in New York that all taxi-drivers must either be bonded or insured before they can obtain their license. There is no doubt that the extension of this principle to all motor vehicles would greatly relieve the problem of damages for accidental injuries.[1]

We turn now to the sphere of contract, where it has been said that the social interest in the security of transactions requires that every man should be compelled to perform his binding promises. This includes not only promises expressly made, but also all those acts which a reasonable man would have a right to expect as a simple corollary of the conditions of social life. By being members of a civilized community we subject ourselves *ipso facto* to certain liabilities. The law, it is said, undertakes to hold us to these obligations. The danger, here as elsewhere, of attempting to state a universal proposition is that its application conflicts with the complex social realities. It is within the range of both imagination and experience that the social interest in the security of transactions may require that contracts technically unassailable be not enforced.

A convenient illustration is furnished by the present currency instability in Europe. A contract for the sale of goods is made in September, when the rate of German exchange,

[1] Liability without fault is discussed by Pounds, *Introduction to the Philosophy of Law*, chap. iv. See also bibliography there cited, especially Isaacs, "Fault and Liability," *Harvard Law Review*, XXXI, 954.

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let us say, is 2,000 to the dollar. The goods are to be shipped in January, when the currency has depreciated to 10,000 to the dollar. Obviously the rigid enforcement of such a contract would not tend to promote the social interest in the security of transactions. The evils that befall the promissor when he is compelled to perform or pay damages will effect his creditors and through them business at large. The limitation or suspension of liability has, as a matter of fact, become a common practice in the present period of stress. In Germany the courts have had to apply a certain flexibility in their enforcement of contracts, and in Italy, too, there have been cases within the past year of judicial moratorium.

It may of course be argued that the instances we are here citing are those of exceptional conditions. But the truth is that even under stable conditions of currency, difficult situations arise, and that these difficult situations are only aggravated by the rigid enforcement of contracts.

In our own country, we also experienced a post-bellum business panic as a result of the changed conditions of the market. With merchandise dropping 50 per cent or more in value, the courts were soon crowded with cases of sellers bringing actions against buyers for failure to accept delivery. When buyers feared to cancel their contracts outright, they applied a super-fastidious scrutiny to the merchandise delivered and rejected the goods as "not up to sample." This attitude, when contrasted to the war practice of accepting merchandise with little examination, was in reality a breach of the understanding. The sellers indeed interpreted it as such, and brought actions against the delinquent buyers, and in most cases secured judgments. But as the latter frequently could not meet the stress, they were forced into bankruptcy. Thus the conspicuous result of legal rigidity was to increase the business confusion and uncertainty. For bankruptcies in practice are far from being a social blessing. Theoretically, they are designed to protect the debtor from hardship and to

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permit the creditors to wind up his business and divide his assets when it is clear that the enterprise is no longer functioning properly. Actually bankruptcy is the signal for the debtor to make away secretly with what assets he can, for unscrupulous lawyers to come around and get what they can, for the appointment of receivers with large fees and with the one concern of getting what they can—and letting the creditors do what they can.

The cancellation of a contract due to a sudden and unforeseen fall in price cannot at present be adequately dealt with by our courts. Our courts of equity do not have arbitration powers in contract cases. Yet we have here an instance where the loss should be borne where it will do least economic harm. Often it might be equitable to divide the loss between the two parties, and conceivably it might be safe in some cases to make the seller stand the entire loss. In the instance where the seller did not really sustain any loss except the extra profits that he might have made from the enforcement of the contract, such a policy would be both fair and equitable. It might be, too, that in some cases the burden should fall on the buyer—the point here urged is that it does not always inure to the general interest in the security of transactions to enforce a contract and make the defendant pay damages merely because the contract is according to common-law notions unassailable.

From the instances we have cited, what conclusion should be drawn as to the basis of legal liability? When and in what spheres of human conduct shall the law step in and compel A "to give, do or furnish" something to B? The answer cannot be found in the thousands of yellow-covered books that every year are increasing the size of our law libraries. We must seek the answer to this question in the actual facts of modern industrial life. In other words if law is to serve as a means to the end of compelling human conduct needful for the proper functioning of the social organism, and if its sphere is to be that of supplemental aid to both *fas* and *boni mores*, we

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shall be obliged to find out when it acts and under what circumstances.

It is first well to understand that inasmuch as this generalization that we are seeking depends upon social facts it will vary greatly as social facts change and therefore will not be the same for all time and place. This is important. For it appears that the greatest error of the jurist has been to formulate the juristic principle of his epoch and to lay it down as an eternal principle for all time and for everywhere. If we recognize that our generalization is good for only here and now, we will have advanced a great way to the ultimate goal of avoiding that confusion of thought that characterized the nineteenth-century juristic reasoning.

First, then, there are a great many cases where a man acts at his peril. In other words, there are some things that are done in society to which society attaches a liability if accident should follow. The reason for this will be found in the fact that in all those cases the accident and the injury resulting therefrom are so interrelated as almost to constitute one act. So, if a man should keep wild animals on his land, it is extremely probable that they would injure anyone within reach. A reasonable man would anticipate as much. Cattle also may be expected to trespass on your neighbor's land in search of better pasture. It is easily seen that your automobile is under your control and will injure no one unless you are careless in driving it, but your cattle will stray over to the next man's property as like as not. If you are conducting blasting operations on your land, like as not, you may thereby injure the next man's property. So too, if you are running a factory with a few hundred workingmen, statistics show that a certain number of accidents will happen, willy nilly. You cannot avoid them. You may be able to decrease them by supervision, by shorter hours, by training your men, but they cannot be entirely avoided. In all cases of liability without fault it will be noticed upon observation that the loss is placed on the

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shoulders of him who can regulate the loss or more easily insure against it. This has been well named the insurance basis of liability. Perhaps in an ideal society all damages suffered by anyone, in a much larger circle of situations, will be compensated for by society. So that we approach a condition when all of us are the insurers for each of us. But till then we shall be content with imposing a liability (in cases resembling those enumerated above) upon him who can most easily transfer the burden to society. We have seen that contractual liability presents similar problems.

Our great industrial development and the commercial life of our large cities will not and cannot be regulated by the notions of contract that were fitted and designed for pioneer society. Again we must turn to the experience of business men and ask them what they need by way of regulation to insure the proper conduct on the part of business men toward each other. Here again law is not the only means of control nor even the best. The best means of control is the one that exists almost in spite of men. It is the common knowledge that people will not be fooled twice the same way. A man who is engaged in buying and selling goods, or in manufacturing and selling, will soon realize that there are certain practices that his customers will not stand for and that there are certain other practices which will ostracize him from the business world. Here and there a commercial genius with a so-called "head for business" will perpetrate a new one. But the instances are comparatively few and need not be reckoned with. The general interest to be secured here is the public interest in security of transactions and of acquisitions. It is difficult to imagine that in our complex civilization the simple doctrine of consideration can do this. And yet to the average common-law lawyer, contractual liability without consideration somewhere in the contract is quite inconceivable. Business has proven that that expedient is too naïve to solve all the troubles arising out of contract. We must not make our laws of

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liability compel the average business man at his peril or at the peril of his creditors to foresee the unforeseeable. In a time of declining prices the purpose of law should not be to throw up its hands and say, "this is one of those cases we cannot provide for." We must have an elastic system of jurisprudence that will be able to adjust itself as the social conditions change. That very elasticity will react on society and have a stabilizing effect. What we need here is a reshifting of standards. We must recognize the basis upon which we impose liability rather then continually run the risk of disrupting commercial organization by throwing business men into bankruptcy through circumstances that have to be regarded as national calamities rather than individual errors.

There are a host of reasons why a man should be compelled to perform his promises. But our law in the past did not recognize them. It went rather on the theory that a man must abide by that promise for which he has received a consideration. That that notion is insufficient to suit the needs of modern industrial life has become apparent. Contractual liability then is based on the notion that he should pay the damages whose loss will cause the least possible social evils. This does not mean that when a rich man contracts with a poor man he does so at his peril. It simply means that when contracts cannot be performed for unforeseeable circumstances, the results of enforcement are often more deleterious than leaving the burden lie where it falls, or else compromise.

Let us call this the equitable basis of legal liability. Equity is no stranger to these notions. When equity refuses to enforce a hard bargain, it is doing exactly what is sought of it here. The same reason perhaps should enable the courts of equity to examine the results of the enforcement of a contract. It is submitted that liability cannot be determined unless the results as well as the fact of the loss are determined. In the modern method of financing business through banks the very worst consequences might ensue if judgments for large sums of money

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were recoverable against contracting parties under conditions caused by a widespread and sudden reduction of, or a sudden increase in, market prices. For it is just as possible that during a sudden rise in market prices a buyer might recover a large judgment against a seller where the latter contracted to sell at a low price and found himself unable to perform because of the sudden rise in the cost of materials or labor or both. The fact is that business men are everywhere taking notice of these things and that in more than one case banks and financial circles have voluntarily aided the troubled business men to avoid a reaction against themselves. What business men have already recognized, the law cannot wait much longer to recognize.

Recent juristic thought has abandoned its quest for culpability or for that matter any other causal basis of liability. Instead of imposing liability for an alleged fault, we approach the theory of liability from the statistical and social point of view. This leads us to an examination of the social results of the imposition of liability rather than the causes thereof.

This development in jurisprudence is only part of a larger development that is going on everywhere in science and philosophy. The scientist in his laboratory and the philosopher in his study have become more interested in the mathematical correlations which he can superimpose upon reality, rather than the true or absolute cause of phenomena. In many cases this correlation easily serves the practical purposes for which the older notions of causality were used, but there is a large variety of phenomena—from the theory of gases to the social sciences—where there is very obviously no cause in the old sense of the word, only a statistical correlation, with no metaphysical significance beyond the method of laboratory approach.[1] The recognition of these facts by science and philosophy cannot leave jurisprudence unaffected. It too must realize that it cannot discover the absolute cause of things.

[1] Cf. Brunschwig, *L'Expérience Humaine et la Causalité Physique*, Book XIX.

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It is only within a comparatively few years that jurists have realized that jurisprudence in modern life is no longer a science apart and away from other fields of human thought. It has been urged by the Sociological School of Juristic Thought that an age of unification has set in, when it is necessary for legal philosophy to join hands with other realms of human intellectual endeavor and to work out the problems of social life of man together. It is on this form of effort that future legal science pins its greatest hopes.[1]

No complete picture of the theory of legal liability has been here attempted. Only those outposts of the theory of liability have been discussed to which the law is gradually approaching. It is inevitable that the law must adapt itself to the needs of the society that it is to serve. If it fails to do this the already wide gulf that is everywhere observable between layman and lawyer will only tend to increase, and will serve to foster discontent on the part of men with this most excellent method of social control.

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[1] See Pound, *Interpretations of Legal History*, p. 45. "Next to its functional attitude this rejection of the conception of a wholly independent science of law, drawn exclusively from the law itself and ignoring every other department of knowledge as irrelevant to its problems and of no value for its ends, is the most significant feature of modern juristic thought."

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GROUP ESTIMATES OF FREQUENCY OF MISCONDUCT

A. P. BROGAN

I

At frequent intervals we are told either that human morals are improving or that there is a serious moral decline in the younger generation. Careful proof has seldom been offered for either assertion. Each critic has assumed that his personal impression is sufficient evidence. We need some objective and impersonal method by which we can prove what changes are taking place in contemporary moral standards and conduct. In a recent article, published in the *International Journal of Ethics* for January of 1923, I presented the results of an inquiry into the moral standards or valuations of present-day public opinion. That article described the scale or rank of comparative badness according to which university students ranked sixteen practices. The present article studies the same practices in order to see if public opinion has a definite rank for the comparative frequency of these practices. It is a study of group estimates of frequency of misconduct.

There were many theoretical problems and hypotheses which the present writer had in mind while making this investigation. These problems included a method for studying public opinion, the reliability of public opinion as evidence about actual behavior, the comparison of the value scale and the frequency scale, the interpretation of the meaning and objectivity of the value scale, and the use of such material in the teaching of ethics. These problems will be discussed in the conclusion to the present article. They are mentioned here in order that the reader may have these larger problems in mind as he reads the numerous details that follow.

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Whether this study is philosophy or psychology or sociology, I shall not pretend to say. It was undertaken in connection with the teaching and investigation of ethics. It clearly forms a legitimate part of an empirical ethics. The nature and the relations of an empirical ethics cannot be discussed here.

II

For the study of comparative frequency, use was made of the same list of sixteen "worst practices" that was used in the study of comparative badness. This list of practices will be found in any of the tables which accompany the present article. As a full account of the making of this list has been given in the previous article, it is unnecessary to go into details here. The list was made entirely by the students without any influence from the teacher. Each student was asked to hand in a list of the ten "worst practices" which he knew among students at the university. There happened to be sixteen practices which stood out as being most frequently mentioned. These sixteen practices were put in alphabetical order for further study. Students were asked to rank these practices according to the greater frequency of them among the men students at the university, and then similarly among the women students. They were also asked to state for each practice whether it is more frequent among the men, or more frequent among the women, or the same in frequency. The figures given in the present article are based upon figures collected during seven terms from the spring of 1919 to the spring of 1922, inclusive. The students were mainly Sophomores with some Juniors and Seniors, who were taking the introductory ethics course. In order to exclude any influence from the teacher, the rankings were made during the first week of the course, in the classroom, and without signatures. In later years changes were made such as requiring the students to fill out the blanks at home and hand them in with the signatures. But such changes did not produce any difference in the results.

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For this article use was made of the rankings of 258 men and 312 women.

These sixteen practices are obviously classes. No attempt was made to give rigorous definitions for any of them. They were left on a purely popular or common-sense basis. For the study of comparative badness, it was a slight defect that each practice included several types of actions which might have differing values. No such defect occurs in the use of these practices for the study of comparative frequency. Such a relation as comparative frequency obviously holds between classes. It would be possible to study frequency among classes which had been defined with an approach to mathematical accuracy. But such a method would be hostile to the spirit of the present study, which tries to let popular opinion express itself without influence from any critic. The same remarks may be made about the relation of greater frequency. No attempt was made to define this relation. In spite of this lack of logical definitions, popular opinion uses these classes and this relation in very definite and uniform ways, as the following pages will prove.

III

Table I shows the estimates about the frequency among men at the University of Texas. Columns 1–7 give the men's estimates both by separate years and by the total of all the years. Column 8 gives the total of the women's estimate about the frequency among the men. All of the ranks are based upon arithmetical averages. One set of medians is given in Table IV. The rank by the medians and the rank by the arithmetical averages seldom differ 1 per cent.

Examination of columns 2–5 will show that there are numerous slight variations from year to year, but no significant change unless the figures for drinking indicate such a change. Unfortunately, I have no figures for pre-prohibition days. But, apparently, drinking has increased among the men students from 1919 to 1922. During the first three years

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drinking ranked 14 or 15 (which is a very low rank), but during the last year it sprang up to 11. The figures for the following year (1922–23) are not complete, but drinking seems to be at position 10.

When we compare the ranks for the different academic years as given by the men, we find that coefficients of correlation

TABLE I

FREQUENCY AMONG MEN

1	2	3	4	5	6	7	8
More Frequent by Men's Rank about the Men	Ranks of Men about Men by Academic Years				Averages for Total of Men about Men	Men's Rank by Average for Total	Women's Rank about the Men by Average for Total
	1918–19	1919–20	1920–21	1921–22			
Smoking	1	1	1	1	2.5	1	1
Swearing	2	2	2	2	4.5	2	2
Dancing	3	5	3	4	5.6	3	5
Vulgar talk	4	3	4	3	6.1	4	6
Sabbath-breaking	6	4	5	6	6.4	5	4
Idleness	5	8	7	5	6.6	6	8
Extravagance	7	7	6	8	7.2	7	7
Gambling	8	6	8	7	7.5	8	3
Selfishness	10	10	9	9	9.4	9	11
Lying	9	11	11	10	9.7	10½	10
Sex irregularity	11	9	10	12	9.7	10½	12
Gossip	12	13	12	14	10.7	12	13
Snobbishness	13	12	13	13	10.8	13	15
Drinking	14	15	14	11	11.5	14	9
Cheating	15	14	15	15	12.4	15	14
Stealing	16	16	16	16	13.5	16	16
Number of voters	48	76	64	70	258	258	245

among these ranks run from .95 to .98. The average correlation is .96, with a standard error of .02. As all of my main correlations are positive, I shall assume it understood without repetition. When the ranks for the separate years are compared with the total rank in column 7, they have an average correlation of .98, with a standard error of .01.

The total rank as given by the men and the total rank as given by the women have a coefficient of correlation of .90, with a standard error of .05. The reader will notice that there

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are only two practices concerning which there was serious disagreement between the two sexes. The women think that both drinking and gambling are more frequent among the men than the men think. These two differences are the only important ones in either sex as ranked by either sex. What is the cause of the difference, and which rank is more reliable? I have used as my main material the rank of each sex about itself. Then I have given the other for comparison. My reasons are as follows. It seems natural to take each sex about itself because each sex would probably have more information about itself than about the opposite sex. Then the coefficients of correlation for the men about the men are somewhat lower than for the women about the men. As there are no significant differences between the two sexes concerning the frequency among the women, there is no problem there.

IV

The frequency among women students is given in Table II. Columns 1–7 give the women's estimates about the frequency among the women. Column 8 gives the men's estimate about the frequency among the women. In other respects the arrangement of columns is the same as in Table I.

The reader will notice how much more uniform the ranks by the different academic years seem to be than was the case with the men's ranks. In reality there is only 1 or 2 per cent more uniformity among the women, but this slight increase brings the ranks so near to identity that it is very noticeable. The coefficients of correlation for the women's ranks by the separate academic years run from .97 to 1.00. The average correlation is .98, with a standard error of .01. The correlations of the academic years with the total for the women have an average of .99, with a standard error of .005. When the rank by all the women about the women is compared with the rank by all the men about the women, the coefficient of correlation is found to be .98, with a standard error of .01. This is

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virtual identity. The only difference worthy of comment is about idleness, which the men think is slightly more frequent among the women than the women think.

In studying the detailed differences from year to year in the women's ranks about the women, there are only two differences to be noticed. One very slight difference concerns

TABLE II

FREQUENCY AMONG WOMEN

1	2	3	4	5	6	7	8
More Frequent by Women's Rank about the Women	Ranks of Women about Women by Academic Years				Averages for Total of Women about Women	Women's Rank by Averages for Total	Men's Rank about the Women by Averages for Total
	1918–19	1919–20	1920–21	1921–22			
Gossip	2	1	1	1	3.2	1	1
Extravagance	4	2	2	2	3.5	2	3
Dancing	1	3	3	3	4.0	3	2
Snobbishness	3	4	4	4	4.3	4	5
Selfishness	5	5	5	5	4.8	5	6
Idleness	6	6	6	6	5.8	6	4
Sabbath-breaking	7	7	7	7	6.9	7	7
Lying	8	8	8	8	7.7	8	8
Cheating	9	9	9	10	9.6	9	9
Vulgar talk	10	10	10	9	10.0	10	10
Swearing	11	11	11	11	10.5	11	11
Stealing	12	12	12	12	11.0	12	12
Sex irregularity	14	13	13	14	12.8	13	14
Gambling	13	14	14	15	12.92	14	13
Smoking	15	15	15	13	12.98	15	15
Drinking	16	16	16	16	14.0	16	16
Number of voters	36	106	73	97	312	312	188

extravagance. In the war-year 1918–19, extravagance is put as less frequent than in the following years. I think that this difference gives considerable evidence concerning the accuracy and freedom from mere tradition of our figures. The other and more pronounced difference is about smoking among the women. The figures that I have given show only a two-point increase in the ranks of smoking. But the figures by the three terms of each of the last two years are more significant. I give the figures for smoking during the seven terms

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from the fall of 1920 to the fall of 1922, inclusive: 15, 15, 14, 14, 13, 11, 10. This last rank of 10 is exactly the same as the rank for women's smoking in several of the northern universities. It is probable that smoking among the women in the northern universities was prevalent earlier than among the women at Texas. But I have no figures concerning the northern universities earlier than 1922.

V

Table III gives a picture of the dispersion or deviations for the academic year 1921–22. During the previous years I had been mainly interested in studying the scale of com-

TABLE III

DISPERSION

	Quartiles for Men about the Men. Academic Year 1921–22. Number = 70				Quartiles for Women about the Women. Academic Year 1921–22. Number = 97			
1	2	3	4	5	6	7	8	9
	Q	Q_1	Q_2	Q_3	Q_1	Q_2	Q_3	Q
Cheating	2½	10	12	15	8	10	13	2½
Dancing	2½	3	6	8	1	3	6	2½
Drinking	3	7	11	13	14	15	16	1
Extravagance	3	5	8	11	2	3	5	1½
Gambling	2½	5	7	10	12	14	15	1½
Gossip	3½	8	13	15	1	3	4	1½
Idleness	3	3	5	9	4	5	7	1½
Lying	2½	7	10	12	6	8	9	1½
Sabbath-breaking	3	3	6½	9	5	7	9	2
Selfishness	3	7	9½	13	3	5	7	2
Sex irregularity	3½	7	11	14	11	14	16	2½
Smoking	½	1	1	2	11	13	14	1½
Snobbishness	2½	9	12½	14	2	4	6	2
Stealing	2	12	15	16	10	12	13	1½
Swearing	2	2	3	6	9	10	12	1½
Vulgar talk	2	3	5½	7	8	10	12	2

parative valuations, and so had made no use of the frequency estimates except to get the ranks, by averages. It has not seemed profitable to go back over this earlier material to study the dispersion, so I give only the figures for the seventy men and the ninety-seven women in the one academic year.

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Columns 2–5 give the figures for the men about the men's frequency, and columns 6–9 give the figures for the women about the women's frequency. Columns 1 and 9 give the quartiles for the men and the women, respectively, that is, one-half of the difference between the 25 percentile and the 75 percentile. The average quartile for the men is 2.56, and for the women it is 1.78. The medians (or Q_2) are given in columns 4 and 7.

VI

We have now finished the study of the separate ranks about the men's frequency and about the women's frequency. But what is the relation between the men's rank about the men and the women's rank about the women? Does the same number in the two ranks indicate equal frequency? To make the question more concrete, let us consider the place of stealing in the two ranks. For the men stealing is in position 16 or last, but for the women stealing is in position 12. Does this indicate that stealing is more frequent among the women than among the men? At first thought, this would seem to be the inevitable conclusion, but it may be incorrect. So far we have no real basis for comparing our two ranks. Abstractly, it is possible that every one of the men's practices might be more frequent than any one of the women's practices. Or the relation might be reversed. We can go no further without new facts.

To meet the foregoing difficulties, the students were asked to state for each practice whether it is more frequent among the men, or more frequent among the women, or the same in frequency. As there seemed to be no noteworthy differences between the answers of the men and the answers of the women, all the figures were lumped into one set of 396 voters, as given in Table IV. Columns 4–6 give the first results expressed in terms of approximate percentages. For example, consider drinking. Approximately 95 per cent of all voters agreed that drinking is more frequent among the men, 2 per cent

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said that drinking is the same in infrequency, and 1 per cent said that drinking is more frequent among the women. So the case of drinking is fairly clear, and we are entitled to say (as in column 3) that drinking is held to be "more frequent among the men." But some of the other practices are not so clear. We need some mathematical device with which to divide the practices into the masculine, the feminine, and the

TABLE IV

RELATIVE FREQUENCY BETWEEN THE TWO SEXES

1	2	3	4	5	6
PRACTICES RANKED BY COLUMN 2	PERCENTAGE OF "MASCULINITY"	IN WHICH SEX MORE FREQUENT	APPROXIMATE PERCENTAGES OF COMBINED VOTES OF 182 MEN AND 214 WOMEN		
			More Frequent among Men	Same	More Frequent among Women
1. Gambling	.99	Men	.98	.01	.00
2. Smoking	.98	Men	.98	.00	.00
3. Swearing	.97	Men	.95	.03	.01
4. Drinking	.95	Men	.95	.02	.01
5. Vulgar talk	.90	Men	.84	.12	.02
6. Sex irregularity	.87	Men	.77	.19	.02
7. Sabbath-breaking	.76	Men	.57	.36	.05
8. Stealing	.74	Men	.52	.43	.03
9. Cheating	.52	Same	.26	.52	.20
10. Idleness	.51	Same	.27	.49	.22
11. Lying	.50	Same	.26	.47	.25
12. Dancing	.37	Same (?)	.05	.61	.32
13. Selfishness	.24	Women	.08	.31	.59
14. Extravagance	.22	Women	.12	.21	.66
15. Snobbishness	.08	Women	.02	.12	.84
16. Gossip	.07	Women	.01	.13	.84

equal practices. Unfortunately, I have not been able to discover in the available literature on statistics a device for dealing with such triple divisions. So I have had to adopt a makeshift which is by no means perfect but which perhaps gives sufficiently reliable results. Any criticisms or suggestions concerning this problem will be very welcome.

For each practice I took all of the "men" votes and half of the "same" votes, then this total was balanced against all of the "women" votes and half of the "same" votes. On this

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basis a so-called "scale of masculinity" was constructed, as given in column 2. The percentage for each practice represents the sum of the "men" votes and half of the "same" votes, divided by the total number of votes. Several other methods of constructing this scale were invented, but none of them seems entirely satisfactory, and all of them give about the same result. Notice that the scale in column 2 is almost the same as the rank in column 4, which is based only on the votes for "men."

This "scale of masculinity" will be found useful for many statistical purposes, but here we are concerned to use it only for the purpose of deciding which practices are voted more frequent among each sex and which are voted the same. The divisions are given in column 3. When the percentages of "masculinity" ran from 100 to 67, the practices were labeled "more frequent among the men." When the percentages ran from 66 to 34, the practices were considered (approximately) the "same." When the percentages ran from 33 to 0, the practices were labeled "more frequent among the women." The only questionable practice is dancing, which is on the lower edge of the "same" practices. The results are as follows. Gossip, snobbishness, extravagance, and selfishness are more frequent among the women. Dancing, lying, idleness, and cheating are approximately the same. The other eight practices are more frequent among the men.

VII

We are now prepared to answer the question which was left unanswered at the beginning of the previous section. Stealing is 16 in frequency among the men, and 12 among the women, but it is somewhat more frequent among the men than among the women.

Table V gives the results of tying together the main figures of Tables I and II (each sex about itself) with the help of Table IV. We first tie together the four "same" practices—dancing,

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idleness, lying, and cheating. This gives a rough method for fixing the place of each practice with reference to the opposite sex. The other practices are spaced in each column according to the differences between the arithmetical averages. But neither the position nor the spacing must be taken as completely

TABLE V

COMPARISON OF MEN ABOUT MEN AND WOMEN ABOUT WOMEN

1	2	3	4	5	6
Rank by Average for Total	More Frequent by Men's Rank about the Men	In Which Sex More Frequent		More Frequent by Women's Rank about the Women	Rank by Average for Total
1	Smoking	M			
			W	Gossip	1
2	Swearing	M	W	Extravagance	2
3	Dancing	—S—	—S—	Dancing	3
4	Vulgar talk	M	W	Snobbishness	4
5	Sabbath-breaking	M	W	Selfishness	5
6	Idleness	—S—	—S—	Idleness	6
7	Extravagance	W/			
8	Gambling	M			
			M	Sabbath-breaking	7
9	Selfishness	W/			
10½	Lying	—S—	—S—	Lying	8
10½	Sex irregularity	M			
12	Gossip	W/			
13	Snobbishness	W/			
14	Drinking	M			
15	Cheating	—S—	—S—	Cheating	9
			M	Vulgar talk	10
16	Stealing	M	M	Swearing	11
			M	Stealing	12
			M	Sex irregularity	13
			M	Gambling	14
			M	Smoking	15
			M	Drinking	16

accurate. This table indicates approximate relative position. It must be left for later investigations to show whether it is possible for other methods to give greater precision to such results. At present, I do not know of such methods. The nearest approach to such methods is the Thorndike-Hillegas order-of-merit method, but that method seems incapable of dealing with the triple facts which are included in Table V.

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In Table V, column 3 gives the classification by sex frequency for each practice according to the results of Table IV. Column 4 gives the corresponding facts for the practices in column 5.

Please notice that there is complete consistency among the two ranks and the tying-together results. To illustrate, let us suppose that Sabbath-breaking had been ranked second in frequency among the women, but that all other figures were about the same. In this case, there would be a manifest inconsistency, because Sabbath-breaking would be above dancing in the women's list, but the tying-together figures would indicate that it should be much lower. That there is no such inconsistency in any of our figures is an indication of their trustworthiness.

It is interesting to notice the practices among the women which are less frequent than any of the practices among the men. There are five of these practices—stealing, sex irregularity, gambling, smoking, and drinking. In the year 1922–23 smoking would not be down in this part of the women's list but would be up above swearing.

Notice the position of selfishness with reference to the two sexes. There was no disagreement between the two sexes here; both agreed that selfishness is more frequent among the women than among the men. These results should be compared with the traditional doctrine in our textbooks that altruism and benevolence were caused by the "maternal instinct."

VIII

At the present day there is much popular discussion concerning the so-called "double standard." I hope to publish soon some statistical results on this problem. Here the indisputable fact may be pointed out that there is a system of "double behavior." When the men's rank about the frequency among the men is compared with the women's rank about the frequency among the women, the coefficient of correlation is positive

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.03. This correlation is about the same as a purely chance correlation. So far as these sixteen practices are involved, there is no similarity between the men's behavior and the women's behavior.

Is there any relation between the scale of frequency and the popular opinion about the comparative badness of the same practices? When the men's rank of frequency among the men is compared with the men's rank of comparative badness, the coefficient of correlation is negative .56. For the women the corresponding figure is negative .58. In other words, there is a moderate negative correlation between greater frequency and greater badness.

When the men's scale about the frequency among the men is compared with what has been called the "scale of masculinity" (Table IV), there is found a positive correlation of .36. Then the "scale of masculinity" was reversed and the resulting "scale of femininity" was compared with the women's rank about the frequency among the women. Here the coefficient of correlation is positive .75. Apparently, the women are more influenced in their behavior by the comparative masculinity or femininity of a practice than the men are.

IX

The figures and tables given above furnish the main content for the present article. They give a fairly complete study of public opinion about the frequency of sixteen practices in a fairly typical American university community. This article cannot study the detailed facts about Texans outside of the university or about town or gown in other American states. I have some figures concerning these other groups. These figures are enough to show that the results of the present article are fairly typical of much wider circles. Only the coefficients of correlation will be given here, mainly because the figures used are less complete than the figures for the University of

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Texas. It is clear that a detailed study of each community should be made by someone who is on the ground.

Concerning the cities or towns in Texas, the only figures available are estimates made by university students. Such figures are unsatisfactory, but no better ones are yet available. They indicate a general similarity. When the rank of the men about the frequency among university men is compared with the rank of the university men about the frequency among the men in the home towns, the coefficient of correlation is positive .93. The corresponding figure for the women is also positive .93.

Figures about frequency are available from two northern universities—the University of Chicago and the University of Wisconsin. For the men about the frequency among the men, the correlation between the University of Texas and the University of Chicago is positive .95. The corresponding figure for the women is positive .94. These figures compare Texas during 1919–22 with Chicago during 1922. The reader will remember that smoking among the women seems to have been increasing. This fact accounts for a large amount of the moderate difference between the women at the two places. When the women at the two universities are compared for the fall of 1922, the correlation is positive .99. In other words, there is almost no difference between the women of the two places when allowance is made for the influence of time on the practice of smoking. The men seem to maintain their 5 per cent difference at all times.

The figures from the University of Wisconsin unfortunately do not separate the votes of the women from the votes of the men. So we may expect the same tendency for the women to put drinking and gambling more frequent among the men, just as we found this tendency at Texas. The men about the men at Texas and both sexes about the men at Wisconsin have a correlation of positive .93. A large amount of this

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difference is caused by the figures concerning drinking and gambling, as we expected. The correlation for the women at the two places is positive .98. For the women the figures are for the year 1922 in both places. This correlation is virtual identity.

So we may conclude that the tables given in the present article are highly representative of American college life, and that these tables are somewhat representative of ordinary American life outside of colleges or universities.

X

The interpretations of our results must be short. The method used in this investigation obviously gives an empirical tool for the study of public or popular opinion. In public opinion there is a scale of the frequency of moral topics, and this scale seems to vary but slightly from year to year and from place to place. All the rankings are surprisingly uniform, but the rankings about the women are somewhat more uniform than the rankings about the men. This study of public opinion ought to be extended to many different topics, and to different places, times, and classes.

Do these rankings about frequency of behavior give reliable evidence about the actual behavior of these groups of human beings? This question does not concern the merely statistical measures of reliability, such as the standard error or the probable error. For our figures, these measures of unreliability were very low, seldom over 1 or 2 per cent. In other words, the statistical reliability of our figures is very high. But this means merely that a repetition of the experiment would give closely similar results. The more fundamental question is whether these human judgments are trustworthy or true. Into the epistemological aspects of this problem it is hardly necessary to go in this article. The question is whether these judgments and rankings can be used as reliable evidence concerning human behavior or conduct. Against such use,

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the argument might be made that these rankings are mere expressions of tradition, and are not based on observation of fact. That might be the case but the evidence runs the other way. Aside from the fact that there is no reason to suppose that there has been a tradition about the frequency of our topics, there are three arguments to show that these rankings are based on observation rather than tradition. In the first place, consider the position of extravagance among women during the war-year 1918–19. That position, when compared with the higher positions during the following years, would seem to show that the judgments varied with the varying facts. In the second place, it seems improbable that tradition could account for the curve of smoking among women. That seems to be a response to the changing facts. Finally, the figures about the frequency of selfishness among men and among women could not be accounted for on the basis of the traditions in our textbooks about the origin of altruism in the maternal instinct.

No one would argue that tradition may not have had a certain amount of influence on these rankings. But, primarily, these rankings seem to be more or less accurate observations of facts. How accurate they are, it is impossible to say. The question to be asked is not whether these rankings are completely accurate, but whether we have any more accurate evidence. In this connection it is interesting to recall the old controversy between Plato and Aristotle as to the aristocratic versus the democratic theory of judgment. Plato, it will be remembered, held that one superior man, one expert, is a more reliable judge than a group of ordinary persons (*Republic* 693D, *Laws* 658E–659B, *Symposium* 194BC). Aristotle held the contrary view, that "the many judge better . . . . for different people judge different parts and all judge all" (*Politics* 1281b8–10). My own training had inclined me to favor the Platonic theory that the experts are the best judges. But I have never been able to find two "experts" who can agree

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as much as these group judgments agree. So the group judgments seem to be more reliable evidence than any other evidence that is yet available.

From the point of view of ethics and philosophy, the interest in these frequency scales comes from a comparison of them with the scale of comparative badness. As this scale has been printed and discussed in detail elsewhere, only the coefficients of correlation and certain general conclusions will be given here. There was a negative correlation of .56 between the men's frequency and the men's scale of comparative badness. The corresponding figure for the women was negative .58. In other words, there is a tendency for both sexes to perform more frequently the practices which are considered less bad. But this tendency is about a 50 per cent tendency only. So we are hardly justified in drawing any sweeping conclusions concerning the relations between standards and behavior.

Although the value scale and the frequency scale are different in order, they both have one great similarity. The general statistical characteristics of the scale of value, such as the correlations and the dispersions within each field, are very similar to the corresponding characteristics of the frequency scale. If the argument given above is true, that the scale of frequency is based upon observation of facts, then the similar statistical characteristics of the value scale would *tend* to prove that the value scale is also based on observation of facts. But this argument can be only touched upon here.

If we ever undertake to study the meaning of value with scientific method, we shall have to use these frequency scales in the process of investigation. The general method will include a set of correlations between the scale of values and various other scales which are supposed to be tests or criteria for value. But no such correlation can be interpreted without a consideration of our frequency scales. For example, consider the theory of value in utilitarianism or universal hedonism.

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It is possible to compare the scale of general value with a scale of comparative amounts of pleasures and displeasures. But in this, as in every test involving consequences, the frequency of each practice must be considered. It is obvious that different frequencies in the practices may involve different magnitudes in the sum-total of the pleasures and displeasures produced. So these frequency scales will be necessary tools in such investigations of value.

Incidental mention may be made of the pedagogical use of such frequency scales as we have been studying. Many persons in the world today have the idea that philosophical ethics consists mainly of concept-juggling and utopian exhortations. Against such ideas there is no more sure remedy than the empirical study of these scales. They arouse the students' interest and activity. They give the teacher a clear insight into the present state of mind of his class. These scales force students and teachers to go from the debating or dialectical method to the investigative method both in describing the facts and in explaining them. Ultimately, these scales may form some small part of the foundations of a truly empirical and scientific ethics.

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THE DISTORTION OF ECONOMIC INCENTIVE

REXFORD GUY TUGWELL

I

It often happens that strangers in America are moved to comment on the barbaric ostentation of the more favored classes here. This impulse of display expresses itself, they say, in personal trappings—jewels, furs, and silks—and in homes no old-world castle can equal for splendor; but most strikingly of all in the gleaming mechanisms that move upon our streets, the latest achievement of our time to be embodied in a great industry, and the epitome and revelation of our aspirations: the limousines, the cabriolets, the landaulets, the sedans, the coupés, and the broughams. If one stops a moment to gather their full flavor, the words, standing by themselves, are seen to possess the power to convey the French luxuriance of the things. And the place of the things in our esteem needs little other comment to be made clear.

Visitors from civilizations with more subdued tastes are struck suddenly with the realization of this costly parade to which most Americans, having become habituated, are more indifferent. Of course, second thought unfolds the error in saying that all this is American. It is, rather, a characteristic of industrialism, and wherever industrialism exists competitive consumption also exists. In older lands tastes may be more subdued, life may be lived less completely in the streets than with us, that is all. What is here a greed for the envy of the crowd may in other places take the form of greed for the envy of a less large crowd. It may be kept, therefore, more closely within certain social circles, even confined for the most part, possibly, within doors. This is also true with our older and more sophisticated social groups. The newly rich are a more promiscuous phenomenon in America because of the superior

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nature of our exploitable resources in the present state of civilization; but this is purely temporary and fortuitous, and there is nothing to show that Americans are inherently more addicted to vulgarity than any other people; but the fact is that, as things stand at present, we are peculiarly tortured in this respect. This is because America stands highest industrially. The phenomenon is industrial, not American; and in it are included the grandest and the meanest achievements of our kind, the greatest genius of our productivity, the most depraved uses of its wealth.

The comment of an Englishman who had stumbled upon the varied phenomena of Chatham Square in the course of a hunt for the Bowery of tradition expresses the reaction of an unaccustomed witness. He said:

> I've never seen so great a *contrast.* There you had it all at once—an epitome of our time. Obviously most of the men and women were derelicts; and the children were quite habituated to the gutters. There was dirt in the air and noises—I never heard so great a *clamor.* It came from overhead and underfoot. It was flung in one's ears from every side. But I got to notice, when the noise no longer startled me, that there were coming down from the Bridge and across the Square a constant line of limousines. They were limousines from Brooklyn, I learned later, smart and shining, silent and swift, with cool, dark interiors. I was never so struck with their perfection before. But neither was I ever so struck with the contrast they make with the world they traverse, the streets they run upon. A limousine in Chatham Square seems to me the apotheosis of—well, of what you've got here.

It is, of course, all true. He had hit upon a significant, if sometimes hidden, meaning economists express less vividly if more accurately when they remark upon the future of an age that thinks of the values of exchange—the prices of things—as satisfactory guides to conduct. And so, incontestably, our age acts as though it thinks, however it may formally protest the contrary.

His comment originated in the revelation of a truth hidden to him before—"something," he said, "which, once the leap

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had been made, seemed always to have been present in his mind," but which, in fact, had never before risen into consciousness. It is a revelation like this that comes to one who, after long confinement, is permitted to come out again into the open and realizes as never before the unique and compelling quality of a well-known neighborhood. We are always making such discoveries; but Americans long ago lost any savor there might have been once in such a situation as seemed so striking to the English observer. The eyes of Chatham Square gazing from the curb or the gutter into the limousines from Brooklyn Heights is a contrast that has its counterpart in every neighborhood of America, if the term "neighborhood" be stretched a very little. It no longer jolts our senses. Yet, it is of the utmost significance. Into one of these automotive mechanisms has gone the very essence of our accumulated store of knowledge and skill. Its parts are fashioned with an accuracy measured only in the fractions of the thousandth part of an inch, a perfection which is so costly and so hard won that only the mind of an engineer illumined also with philosophy can fully comprehend it. But then, too, the world is ransacked for the materials of its decoration. Absolutely nothing is spared that can enhance its mechanical fineness or its beauty. And finally, it stands or glides upon the street the most perfect product of our age.

And yet in the uses to which it is mostly put it is a sterile thing; for limousines are given to the uses of an ennuied leisure. Its clientèle is a circle of jaded senses. It arouses no appreciations comparable with its smoothness, its beauty, or its cost. And in this it is symbolic—a measure of the length to which society can go on the way to desuetude and degeneracy when healthy controls are broken down.

It is sometimes argued that after all we can well afford our limousines, and, furthermore, that all the perfect artistic achievements of any age have been in this sense sterile. But

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the question whether we can afford it is best answered by the simplest of facts—by the contrast between the thing and the ordinary world it moves in. How can it seriously be said that we can well bear this burden when the most casual observation reveals the diversion of our wealth from the instruments most men live by to those that titillate the senses of a few dilettantes? As to a judgment of it as art, that is frankly more difficult. But it might at once be said that however much it may be justified as a thing of beauty, its appropriation to private use and the indiscriminate stimulation of envy is not to be condoned by the simple label "art." Perhaps it is the modern equivalent of the statues of the Greeks, the painting of the Renaissance, the lyrics of the Elizabethan Age, and the music of the German masters. We should have a complicated explanation, however, by the time we had given it a rationale as a thing that, like all great things of art, glorified its maker and transformed its beholders. As a fact, it is often a source of pain to its maker—the pain of monotony and overwork—and of no particular pride, since the pride must be divided among 1,000 or 10,000 wage workers, though, of course, artists have always had these hardships, and for the pride of single workmanship we may perhaps substitute a kind of collective pride in being a collaborator in achievement. Nor does it transform its beholders by its beauty. It might if it stood only in show windows, or were operated in the parks for a spectacle; but it is not. It is monopolized. It becomes a favorite instrument of personal adornment. The modern courtesan wears the landaulet as her earlier sister wore her jewels. And she flaunts it in the faces of many thousands more of her rivals—for her potential rivals are myriad—than her predecessors could, because the thing itself carries her abroad upon the streets.

There is a vast exaggeration, of course, in selecting the automobile as the particular object of analysis to see whether the costly adjuncts of modern civilization are after all worth

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while. Many other things might with equal reason be selected. The automobile is a particularly obvious illustration because of its locomotive qualities, that is all.

II

When one stands upon the curb among the poor and suddenly sees the evidence of fabulous riches passing, one is confronted with the question: How can it be? It is a question that has puzzled other generations, but none as it has ours. And we are only now beginning to see the relevancy of the curious modern inversion of the psychological stresses of normal living. The desirable ways of living and qualities of behavior observable in less complex economies are here distorted out of all semblance to their origins. In a simpler existence those persons are revered—and thus set the fashion for conduct—who serve their neighbors best, economically and socially. For an illustration of this way of life and mode of conduct we may use the country doctor of a generation or two ago. Others might be chosen, but none perhaps who would be still personally familiar to so many of us. What kind of pay was it that he demanded for his services; was it money, the power to command wealth? We know that it was not. His pay was mostly in such sort as a gratefully wrung hand and a later saying in the mouths of people—his neighbors. How would this plain, rough, bearded man appear, inclosed in the shining limousine of our time? Surely the meaning of the contrast between the fundamental motivations of life is plain enough in the mere stating. The fact is that the country-doctor sort of person in the environment which produced him neither could nor wished to become rich. If there were no other reason, there is explanation enough in the resentment of neighbors. The fact is that in a simple economy people see that the getting rich of neighbors is accomplished at the general expense, and they will not tolerate it. There is a faint

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remainder of that feeling still so far as some professional classes are concerned.

It is to the business man and their families that the limousines most fitly seem to belong. It is clear that the physician who acquires wealth has done so at his neighbor's expense. It is clear that the merchant's or the manufacturer's riches have the same source in a simple economy. A shopkeeper from whom only his neighbors buy incurs ill-will along with a fortune. But when society organizes itself a little differently, when it has grown a little, when the area of the market in which the shopkeeper sells grows large enough so that he is socially removed from his customers, he incurs no social disapproval with his wealth. In fact, he appears to be quite a clever fellow, for he is getting rich out of foreigners, and we all of us dislike foreigners anyway. His neighbors, therefore, yield him the praise which is the supreme gratification of man's existence.

In the sense that men are moved by it, all is quite surely vanity. It enlarges and feeds upon itself. He who has had some gratification of this kind is inclined to make the most of it. In order to emphasize his cleverness in business and to obtain more praise, he forces things a little. A bigger house, more servants, and all the other appanages of riches convince one's neighbors of the substance. Neighbors are easily impressed, inclined, even, to enlarge evidences of prosperity into the certainty of affluence. The shadow is taken for the substance; the underpart of the pyramid is inferred from the apex. The fellow who can spend most is the cleverest fellow of the neighborhood. The thing becomes a vicious circle, for when he patronizes his neighbors they are stung into apeing him. Can they afford to let their wives and neighbors think him cleverer than they?

Our social groups are consuming groups, this is the difficulty. We have almost completely divorced our producing lives from

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our social lives. At home and among our friends we have no social approval for our productive efforts, and so our neighbors and, tragically, our very wives and children come to estimate us according to our incomes, and not only according to our incomes, but according to the evidences we show of power to spend. Income is inferred from expenditures. So it happens that our social approvals depend upon the limousines of life. And for the old morality of service, of workmanship and pride in skill, there is substituted the morality of luxury and display.

We see that this is due to the nature of the social system, not to any change in human nature which, indeed, is curiously unchanged and helpless in the face of these old stimuli. It drives us, just as it always has, to do the thing which will win for us social approval. There is a pathetic human weakness for enlargement in the eyes of those we care about; and most of us care most about our family, our neighbors, and our friends. In a simpler economy this human trait made for working standards of responsible living, the service of the group; it tied man to man and knit the social fabric closer; in our modern economy, wide as the possibilities of material success are, it becomes a force which drives us to social sabotage, to spendthrift living, to putting up a front, to being "tin-horn sports," to making shabby goods.

When the cycle of economic processes, production, consumption, and distribution are confined to a group sufficiently small so that the controls of social life extend to all the processes and their interrelations, the monstrous goods of modernism, so subtle, so perfect, and yet so sterile, are made impossible of happening; but when any part of life becomes depersonalized, as our productive life has, the stresses are twisted and distorted, and human nature, following the lead of old, deep-seated guides and incentives, is led, trusting and helpless, into these cul-de-sacs of degeneracy. There is no chance for any different eventuation. Modes of conduct are not, as we supposed a few years ago, fixed and inflexible. New habit patterns may be

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constructed that have the force of will in them; but to ask that habit patterns be built up which require an indifference to the approvals of the social group in which one lives would raise other questions quite as vexing. An indifference in one respect involves indifferences in other respects, for instance, and the immense moral force of social pressure is at once lost. Surely this cannot be the answer to the problem that is posed by distortions of economic incentive. We do not want men to be insensitive to group morals. Rather, we want an increased sensitivity.

But if we are to keep men responsive to social approvals, these approvals must yield better fruits than they are now producing. Some moral controls over the immense and increasing spending power of our age must be constructed so that the first recourse of persons who come into money, as we say, will not be to barbaric ostentation and all the silly vanities of competitive consumption. It ought to be wrong to squander wealth, and only right to use it wisely and well. We have got to give up trying to make of every day a Roman holiday; we must sometimes remember to celebrate the appointed feasts of reason.

If the answer to the problem is not to be one which will require a change in human nature so wide and deep as to disturb many other relationships of life, it must involve a change in the stimuli which call out different modes of conduct. It may be that friends, neighbors, wives, and children can be trained to look for productive virtues rather than consumptive spectacles; but this must involve some change from the present in the direction of making production more spectacular; of setting up measures of productive efficiency; of making it seem virtuous and worthy of approval to be productive. How this can be done in a factory age is, one must admit, very difficult to see, for factories take work out of the home and separate the lives of men and women. In simpler economies, the place of work is the home; and production is a joint task;

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and there are thus built up about it all the associations of home and neighborhood, the setting from which it cannot be extracted. In our age this emotional content with which all things in the home must be charged is removed, and the productive process has to stand by itself without this powerful support, and this has such important results upon the institution of the home also that it, too, seems to move toward disintegration. There is nothing for the home to rest on now that industry has been taken away from it, and there are no more large families to hold things together. Both industry and the home have lost much by their separation; and for neither of these old institutions, as they once existed, or for their place in our lives, is there any adequate substitute.

Two questions pose themselves: (1) How can modern production be made to seem so important that productivity will regain its place as the virtue it was, for instance, under the craft system? (2) How can consumption be controlled so that the ways of use of the instruments of life will conform to such requirements as the law of least cost; the necessity for variety, harmony, and grouping; and, in general, the requirements of civilized life and of progress?

Perhaps it can be made to seem wrong to squander wealth; and perhaps it can be made to seem supremely important to produce it. But neither in our popular morality, with its roots in a past age and its controls devised for a medieval economy; in religion, which clings to outworn ethics, irrelevant for the present; nor in public-school education, which is dominated by the two, does there seem to be a sufficient promise. But it is through some such social agencies as these that controls will have to come.

It is of course necessary that time—much time—should elapse between changed conditions and the popular discovery that they have changed, and an even longer time is necessary for new controls to be set over the new forces. We should not expect twentieth-century architects, trained in the traditions

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of medievalism, with the cathedral as its artistic culmination, to master very soon the new materials, concrete and steel. One has only to contemplate New York or any other city to see how costly is this backward-looking tendency; and how absurdly medievalism flowers on Manhattan. We should not expect the new homes and factories and counting-houses to become beautiful overnight. But we can expect our architects to turn their faces toward the future, and to build us adequate apartment-houses and factories and offices rather than misshapen imitations of Gothic public buildings. And so it is that we can much less expect moral controls for new forces to form overnight. It is enough if we can see the ministers and priests, the editors and teachers, the poets and painters, beginning to turn away from the past to make a better future.

One difficulty that runs all through attempts to get control of the modern forces in the interest of a better world is that the old rate of change has been superseded by a greatly accelerated one. We have not centuries in modern times to elaborate the detail of one structure as the builders of the cathedrals had. Nor have we centuries in which to work out the moral controls of economic life when the content of life itself shifts so rapidly. But the attempts at control will be made; they will be more and more successful, and will in themselves provide for continuing change. This will be so unless the intelligence of man, having brought him so far on a tortuous way, treacherously fails him now.

This consumption morality which we shall have to have was little needed in any other age of human history, because never until now has there been any appreciable surplus of goods to be consumed. Morality heretofore has been concerned very largely with preventing people from using anything. We have passed the time when a control of that sort is needed. The problem we have is that of wide use, but yet wise use of surpluses, and it is a problem that is posed by our movement out of a deficit and into a surplus age.

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The other side of the problem is quite as important, however, concerned as it is with giving back to the productive activities of men a dignity they seem to have lost among the factories and the markets of modern industrialism. There are signs that we care how productive activities are carried on. We definitely disapprove of sweatshops, of the twelve-hour day, of czarist employer policies, and the like, which form new standards for business owners to meet. But the signs are only too few that any attempt is being made to reconstruct industrial enthusiasm among the workers by the means that would above all others be most effective—I mean by giving them a standing on account of industrial efficiency in the eyes of the persons they care about—neighbors, friends, family. The attempts that are being made to bring about a return of the old enthusiasm for productive efforts are different somewhat. They take the form of efforts to make the workers *contented*, to reduce their grievances, and the like. But these, I think, will continue to remain halfway measures, and to have a half-success. Indeed, the success of any scheme so far tried seems to have been very moderate, and there are some prophets who feel, on the basis of what they see around them of failure, very definitely that we shall not be able to bring it off. They pertinently ask: are there less or more "labor troubles?" is there less or more concentration of spending power? less or more extravagance and waste? less or more social approval for ostentative activities? Very clearly if the answer to these questions now and in the future turns out to be the one these prophets think, our civilization will go the way of the old ones and we shall, perhaps, slither off into a new Dark Age. The alternative does seem to be the honest attempt to recreate the moral controls that have been lost in the growth of industrialism.

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THE MEANING OF RIGHTS

NORMAN WILDE

Any theory of the state must come to an understanding with itself on the subject of rights. Whether in affirmation or denial, it must raise the question of their existence, define their nature, and consider their supposed basis. For it is by relation to the idea of rights that the state itself gets its definition and status. If rights are assumed to inhere absolutely in the individual, then the state is apt to be regarded as a secondary product with its powers strictly limited by reference to the rights in which it has its basis. Or, if such individualism is pushed to its extreme conclusion, we may have the doctrine that the state is a usurper, antagonistic to all rights, a thing to be overthrown in the interest of human freedom. Or, if rights are seen as conditioned by society, there may be developed the theory of the absolute state as their source and guardian, the political providence in the hands of which rest the fortunes and the happiness of individuals.

Before considering the meaning and basis of rights directly, however, it is necessary to look briefly at the subject of institutions and their place in life, for it is always within some institution that the individual comes to a consciousness of his rights, even though the use that he makes of that consciousness is to repudiate the condition that gave it birth.

Men are naturally gregarious, if not out of sympathy, at least out of necessity. They want things that can only be had in common and to secure these they associate themselves together, acting, for a time and for a limited purpose, together. These associations at first probably represent instinctive and habitual modes of action, but as consciousness supervenes and intelligence develops, men become more definitely aware of the ends to be served by their grouping and of the

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necessity of devising means for their attainment more adequate than those supplied by nature. The result is the gradual organization of those things we call institutions, which are the permanent structures or framework of society, the machinery by which it accomplishes its purpose. That which was formerly done spontaneously, out of the demands of the immediate situation, is now done with intention and according to rules defining the place and function of the various members of the group.

The value of such organization is obvious. The purpose of the group becomes more clearly defined, its value is more easily recognized by the individual, and the means to be used in its realization can be more intelligently chosen. But beyond these immediate values there is the more remote and far-reaching one which consists in the permanence and continuity given to these human interests through their objectification in institutions. It is the distinction between instinct and reflection, between mere occurrence and history. So far as men merely act together, their association may be temporary and unmeaning, but in so far as their purpose is embodied in an institution, there is given an idea, a body of doctrine, a tradition that outlasts the lives of the individual associates and is capable of indefinite enrichment through the contributions made by successive ages. And this enrichment means, not merely the enrichment of an organization as a piece of machinery, but the embodiment of this tradition in the lives of its members so that, so far as they enter into the spirit of the institution, they are made partakers of this social heritage from the past.

Institutions are thus the essential conditions of social growth. They are the conservative factors of society, without which the gains of the past could not be made available for the progress of the future. They are the educative forces through which the individual acquires the habits of thought and action essential to him as a member of the human fellow-

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ship. Through them he comes to know what his race has been and done, and learns the ideal type to which he is expected to conform.

But they do more than merely outline the general type and give character and body to the individual's social purpose. It is by membership in them that he finds his own particular place and has his special task defined. For institutions are, in effect, outlines or programs of work, and, like business organizations, have their various positions to be filled by those who seek their membership. To have accepted membership is thus to have found one's job, to have taken one's place on a program, to have committed one's self to a scheme of life involving specific duties and specific rights. School, church, marriage, union, club, lodge involve each a ready-made program for those who seek its fellowship, defining the things that they may do, as well as those they may not do to others or expect those others to do to them. It is by means of this network of institutions, into which every man in modern life is born, that our ideals are made definite and our characters stabilized through the constant pressure of social custom and social expectation. It is these considerations that have led a distinguished English thinker to formulate the moral principle as "My station and its duties," meaning thereby that to find and fill our places in the institutional life of our times is to fulfil the whole duty of man.

There is the reverse side of the picture, however. The formation of habits, while it is a necessary part of every effective life, involves the danger of lessened initiative and growing disinclination to meet the demands of a changing environment. We need to develop routine within us to meet its counterpart without, but nature is not all routine and it is too fatally easy to settle down into the comfortable rut and ignore the demand for new adjustment. Conservation turns into conservatism and tends to stifle the very life it was designed to save. So institutional life, while its permanence may be the condition

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of progress, its fixity may mean the death of initiative and freedom. Tradition and precedent become yokes too heavy to be borne and the individual may be crushed by the very efficiency of a machine adapted to conditions no longer present.

His life will then depend upon the vigor with which he is able to resist routine and mold the institution until it fits the changing situation. It is under conditions such as these, when the institutional machine does not meet the new demands upon it and life seems to be outgrowing the harness it has made for itself, that men come to raise the question of what they call their rights.

It is significant of this that when the problem is thus raised it usually takes the form of a demand for a return to nature, under the idea that institutions are artificial and that human life, to attain its freedom, must throw off their yoke and resume the rights invaded by an oppressive civilization. It was so in the age of the Sophists, again in the dawn of modern political thought, and conspicuously so in Rousseau and the revolutionary era of the eighteenth century. The same tendency is present today in the anarchic revolt from institutional control and the demand for the restoration of stolen rights. Even when the idea is not given an historic interpretation under the conception of a primitive state of nature in which these rights existed, there is still the feeling that in some way they are vested by nature in the individual and are more basic than anything society can bestow. Let us see, then what is really implied in the concept of rights.

In ordinary usage, a right is a reasonable claim to freedom in the exercise of certain activities. When a man asserts his right to property, he means to say that in using it as he will no one can properly interfere with him. He can put up a sign "No trespassing" and, although it may not protect him in fact, it ought to protect him if society did as it should. There is the implication that there should be a kind of hedge about

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the individual or about some fields of his activity, keeping others out and allowing him certain freedoms in the conduct of his life. "Hands off," is the cry, "this is no business of yours, but a matter for me to settle as I see best."

It is important to notice here the distinction and the separability of a power and a right. My right to hold property is not my actual power to do so, but the justification of it. And this right may not be accompanied by adequate power, as in the case of trespass or of attack upon my life. No matter how great the power by which a man holds his possessions, we can still raise the question of his right to them, and only too often is it the case that even the clearest of rights lacks power for its enforcement. Rights thus seem to be on a different plane from that of the actual forces of life, and to imply something of the nature of an ideal. No matter how the brute forces of the world seem to invade and destroy the concrete rights of man, there still remain the ideal meanings above the conflict, untouched and intangible by the powers of the world of mere fact.

A right, then, is not an actual power to do or to prevent interference, but is a claim to exemption from such interference or to aid in the exercise of such power. As such a claim its meaning looks beyond the limits of the individual to a social world as alone giving significance to the demand. Without this reference to another as the object of the appeal, the claim becomes unmeaning. If I demand freedom I must demand it of someone, unless my appeal is an idle soliloquy, and even then I imply an imaginary group to whom my words will have meaning. In relation to wild beasts or to inanimate nature, our rights have no meaning. An animal cannot violate our right to life, nor a cyclone our right to property, for their natures are such as to afford no lodgment or basis for our claims. Our relations are wholly within the sphere of facts and it is only a question of our power to meet their opposing

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force. Our safety lies not in arguments or persuasion, but in guns and cyclone cellars. Rights have meaning, therefore, only within the sphere of social relations.

And this raises the problem of the basis for such claims. Why are we justified in demanding the forbearance of our fellows in certain respects? How can the weaker ask the stronger to forego the advantages of his strength and limit his desires in the presence of an idea? Why should capital respect the rights of labor, or England those of Ireland, or The United States those of Mexico? The reason can be found only in the recognition by men of their membership in a common order, in which each has his part to play and, in virtue of this, is entitled to the conditions necessary for playing it. It is this membership in a recognized common order that alone gives the necessary basis for the appeal. Such an appeal cannot be made to absolutely independent beings, or to those of a different order of life, for there is no common ground to make it effective, no common nature to invoke, nothing to bridge the gap from one to the other. The appeal is to the common program, upon which is put down the part each is to play and which is the justification for whatever is included in each part. So far as we are members of a social whole we can claim the exemptions necessary to the realization of its good. Unless labor and capital recognize a common good there is no meaning in talking of the rights of either, for they are then independents and bound by no common tie. Their relation is then purely competitive and the wager of battle is the only outcome. But when the cry of rights is raised appeal is made to some common standard and the issue is one of reason.

All which points to the truth that rights depend upon duties. In the first place, the only ground upon which I can ask your help or forbearance is that I, myself, have a duty to perform which cannot be done without your co-operation, positive or negative. If the proposed action is only a matter of my

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personal pleasure and without significance for the world, I may desire your help, I may even ask for it, but I cannot demand it as a right or condemn you for refusing to give it. Such refusal will probably rouse my dislike, but my attitude will be very different from that provoked by your failure to further the necessary conditions for the performance of my duty. The latter is a public and objective matter and your shortcoming is not one that concerns me alone, but the community as well. It is not I as a mere individual who claims your respect, but I as the servant of a cause which you too recognize as of supreme importance. It is the king's business that requires haste and not the petty concerns of my private self.

This basis in duties is recognized by the common understanding that the enjoyment of rights is conditional upon their proper use. A man has a right to use a public library if he does not abuse the books, or to drive an automobile if he takes the proper precautions for the safety of the public. Even in the more fundamental rights a similar obligation is recognized. Property can be held only as its owner pays his taxes and refrains from using it in a way detrimental to the public interests. Life itself has no absolute privilege but is only respected as it conforms to the necessities of the social welfare. My rights belong, not to myself in my private capacity, but to the part I have to play in the human drama, and if I fail to play it well I can make no valid claim to the forbearance of my fellows.

In the second place, rights depend upon duties in the sense that my right implies your duty to recognize it. You may not actually respect it in fact and in action, you may ride over it rough shod, but the very meaning of my having a right is that it is a privilege you ought to respect and that you fail in your duty if you do not. It is only in a world of duties that rights have significance. Eliminate the consciousness of the ideal order and we revert to the world of the brute forces where there may be actual sympathy and instinctive

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co-operation, but where the demand for the recognition of a right would be as idle as though addressed to the treacherous sea.

Thomas Hobbes introduced confusion into this subject by his negative use of the term rights. He saw that apart from a social reference moral distinctions lose their meaning.

> Justice and injustice are none of the faculties neither of the body nor mind. If they were, they might be in a man that were alone in the world, as well as his senses, and passions. They are qualities that relate to men in society, not in solitude.

But he then goes on to assert that, in the absence of social relations, every man has a right to all things, even to his neighbor's body, meaning by this that there are no ideal obligations of which he need take account as limitations upon his actions, but that he has liberty "to use his own power, as he will himself, for the preservation of his own nature." In this negative sense, beasts also have rights, since they too have unlimited freedom to fight for their lives, their food, and their meats. A right, however, which no one is bound to respect, which exists as perfectly among beasts as among men, has nothing in common with the rights for which men in society contend, and which are the conditions, not of unlimited war, but of reasonable peace. Hobbes' doctrine of natural rights thus involves its own negation in its revelation of the emptiness and futility of the idea. If the theory is to have any positive meaning, it must interpret the term natural in some non-naturalistic sense not possible in the system of Hobbes. Such an interpretation might distinguish between rights as they exist in the eternal order of things, and as they are imperfectly understood and recognized at any given stage of social development. The individual might thus be conceived to have natural rights as based on this eternal order, even though society fails to support them. But, in this case, their naturalness does not mean their belonging to the individual as such, but rather their basis in an order deeper and more expressive of the nature of man than that found in the conventions of society. The

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consideration of such a doctrine, however, involves the making of some further distinctions in the meaning of rights.

When we say that a right is a freedom of action possessed by a man in virtue of his occupying a certain place and fulfilling a certain function in a social order, there are ambiguities involved. Do we mean that this freedom is one that society will guarantee and compel its members to respect? Or do we mean merely that society recognizes the reasonableness of such freedom, but is not ready to exert its power to make it actual? Or, finally, is it our thought that this is a freedom the individual ought to have, even though society fail either to defend it or to admit its existence? The answers we give to these questions will determine the view we take of the relation of the individual to the state.

As to the first of these interpretations, there is no doubt that we often mean by rights the claims that can be enforced. The basis for these, in this legal sense of the term, is the existence of a law, either in the form of statute or precedent, which defines the freedom and fixes the penalty for its infringement. The common order that we have found to be implied in all rights is, in these cases, an external one, visible and tangible in the form of statute books, courts, judges, and officers of the law. The duties enforced are also, of necessity, external, consisting of the conformity of actions to a legal standard and only indirectly taking into account purpose and will. How much of our lives is to be included in the sphere of law is determined by considerations, partly of importance and partly of convenience. There are some liberties so essential to life that they cannot be left to the chances of individual caprice, but must be regulated by the combined wisdom and force of the community. Life itself, freedom from violence, the secure possession of property, these fundamentals of welfare, are taken under the protection of society and the individual secured in their possession and use. The bringing of other, less fundamental, rights under the protection of the law, is

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determined by utility. A balance has to be struck between the values of certainty and uniformity and those of free initiative. Questions of ease in the defining and enforcement of a right, also enter into the problem of deciding which are to be taken from the keeping of the unorganized public and inscribed on the statute books of the state. But whatever may be the principle of the distinction, it is evident enough that these legal rights form only a special class within the larger group from which they are distinguished.

It is noteworthy also that the smaller group is dependent upon the larger in the sense that the enforcement of the rights is consequent upon their previous recognition by society. It it is because society first recognizes that certain liberties are due the individual if he is to fulfil his function in life that it takes steps to secure these to him through legal enactment. Although the law is the obvious basis of the right, it is public opinion that gave rise to the law and furnishes its effective backing. Take away this background and the statute becomes an empty formula incapable of affording any security for the enjoyment of our freedom.

This being so, it seems evident that the law does not create our rights, but only recognizes them and protects them. The rights themselves exist whether they are thus legalized or not. They are enforced because they are rights, and are not rights because they are enforced. When a workman's compensation law is passed, what is created is not the right of the workman to his compensation, but the machinery by which he is able to enforce the recognition of his right and secure the actual compensation. The only change made by the passage of the law was in the decision of society to enforce a right the validity of which it had already recognized. So, too, when this country freed the slaves, the emancipation proclamation and the subsequent legislation did not create the right to freedom, but only gave the means to make its exercise possible. The process of legislation is one by which force is added to

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ideas, and it presupposes, and does not determine, the truth of the ideas it enforces. The law is thus essentially a means to an end, deriving its value from the worth of the purpose it embodies. As mere force, it is morally indifferent, until its quality is determined by the idea to which it gives backing. A law, therefore, always presupposes a standard other than itself and cannot, in its own might, be the constitutive principle of a right.

If the first of our three questions is thus not to be answered in the affirmative, since the enforceability of rights is not essential to their reality, what answer can we give to the second? Can we say that the reality of rights depends upon their recognition by society as duties morally, though not legally, obligatory? The essentially social reference in rights seems to favor such a conception and there are those who can see no basis for them save in their actual recognition by those against whom they are claimed. From this point of view, the bondage of a slave in a slave-owning community would be no violation of his rights, since in the absence of any consciousness of them their reality would be unmeaning. So, too, previous to the growth of sentiment for equal suffrage, the rights of women were non-existent. Agitation for rights would thus be a process through which they were created by the molding of public sentiment rather than one by which men's eyes were opened to the meaning of rights already valid. We are not always clear as to this distinction between creation and recognition and we are apt to speak of the same rights, sometimes as those that we have and want recognized, and sometimes as those that we have not and demand. But the distinction is one between slavery and freedom. If rights are created by the grant of society, the individual is without appeal and helplessly dependent upon its arbitrary will. He has no rights to be violated until society, in its good pleasure, grants them in answer to his prayer. But his attitude, under this conception, is not one of appeal to objective right, but of

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petition for subjective privilege. So far as he acts as a free man, he thinks of himself, not as trying to extract a favor from the higher powers, but as attempting to educate them to the point where they will be able to appreciate the real system of rights and duties, which they now only dimly understand. No man who is fighting for his rights feels that they are non-existent. He is not creating, but defending them in his struggle for their recognition. Whether he win or lose his battle, it is not the rights themselves that are affected, but society's knowledge and his own enjoyment of them.

The analogy with scientific knowledge is an obvious one. Our knowledge of the relation of food to growth does not create that relation, but only reveals it to us and makes possible our utilization of it. Our ignorance of it does not affect the relation, but deprives us of the advantages of it. The very idea of knowledge implies the reality of an object which it is the aim of knowledge to comprehend and make manifest. So too the recognition of rights implies the reality of social relations independent of the recognition. Ignorance of what these social relations are means loss to the ignorant society through its inability to make the proper adjustments, but it is a loss only because it is a failure to appreciate a system of rights and duties of which its own subjective system is an inadequate apprehension.

The distinction just made between the enforcement of rights, the recognition of them, and their reality itself, must not be taken as implying a division of them into three classes, legal, social, and ideal, for the distinction is wholly external to the nature of rights themselves and concerns only the attitude of society toward them. In themselves, rights are ideal only and have their basis, not in law or in social assent, but in the relation of individuals to the common good. Whatever freedom is essential to the working out of this common good is a human right, grounded, not upon the accidents of conscious recognition or will, but upon the deeper implications of human nature itself.

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We cannot make rights, we can only discover and enforce them.

Finally, there is one more distinction that must be made. To say that rights have this kind of ideal and eternal reality irrespective of social grant might seem to imply that the individual is justified in asserting and acting upon his rights quite irrespective of society's attitude toward them. If they are really his, why may he not do what he will with his own? Why may not the slave take his freedom, the suffragist seize the vote, the oppressed worker take over the control of industry? Does not a right justify its possessor in the exercise of his freedom? Is it not, in fact, a duty to assert one's self in order that society may be brought to recognize the true system of social relations?

All these considerations have a measure of truth in them, but they must be interpreted in the light of a more fundamental principle. Rights are not absolute possessions of the individual irrespective of conditions. They are not liberties to act in general, but only to act in specific ways consistent with, or conducive to, the common good. Hence, to determine what our rights are, we must take account of the concrete situation and, in view of that, decide what liberties are demanded for the working out of the social purpose. And the concrete situation has, as one of its most important elements, the attitude of others toward our act. The rights of a man in a free community are not the same as in a slaveholding one, not because they are constituted by the attitudes of the two groups, but because these attitudes are social facts of which account must be taken in estimating what liberty of action will be for the public welfare. It may be that the act called for under the circumstances will be a defiance of the public will, or it may be that the good in question is one only to be realized through the active co-operation of our fellows, but whatever it is to be it must be affected in its character by the sympathy and understanding of those about us. These moral facts of the

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environment are at least as important as the psychological, biological, or physical in determining the fitness of an act for the promotion of the social good.

There are two ways in which these considerations may be formulated in order to avoid misunderstanding. We may, on the one hand, distinguish between the abstract and the concrete view of rights, meaning by the former the rights that individuals would have if society were constituted as it should be with every man intelligently interested in the common good and anxious that every other man should have the freedom necessary to realize it. Under such ideal conditions there would be the largest possible measure of freedom and, consequently, the ideal system of social rights. The concrete view of rights would refer to so much of this system as could be safely acted upon at a given stage of society, taking into consideration its actual intelligence and charity. St. Paul's attitude is the classic illustration of this point in his refusal to exercise his religious right to eat meat lest he cause his weaker brethren to offend. Under ideal conditions, his freedom would have been part of the perfection of the whole, but in the concrete situation he judged it out of place.

On the other hand, we might distinguish between our having a right and our right to act on it. He had the right, in that it was inherently desirable that the old legal proscription should be done away with and the individual's energies be left free for more vital matters, but he had not the right to act on his conviction because of the evil effect it might have upon those not yet ready for such emancipation. As a right is a freedom, however, it is more consistent and clearer to avoid this formulation of the distinction and to state it in terms of the difference between the abstract and the concrete.

Finally, to return again to the subject of institutions with which our discussion started, these we have found to be the organizations through which the various common purposes of men are carried out. In order that these purposes may be real purposes and also common, they must be the free choices

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of the members of these associations, hence the necessity of securing to them as far as possible the freedom that is the indispensable condition of their intelligent interest in the social good. Every institution, therefore, defines the rights and duties of its members as these are determined by the nature of the purpose embodied in it. The members may not make use of these rights for the promotion of the end intended, but their possession of them is, at least, a negative condition for the attainment of the highest good. And, on the other hand, the system of rights as defined in an institution at any time may not be adequate to the promotion of its purpose, nevertheless, if the association is to hold together, there must be some tentative working agreement as to the limits of individual freedom. In spite of its falling short of the ideal, such a working agreement must in general be recognized by the individual since it is the condition of his sharing in the fellowship of the common life through which alone the good can be promoted. That it can never be the duty of a man to violate such an agreement it is impossible to say, but when such a duty does arise it must rest upon an interest in a higher order and not merely upon the interest of the individual himself. Man cannot shut himself off from his fellows and prosper; his associations are the means for the expression of his larger life; his institutions are the organizing machinery through which he comes to an understanding of his fellows and gets his relations with them defined.

Institutions, therefore, are the expressions of individuality, or at least the means of such expression. They are not encroachments, hostile to the free development of character and power, but are the conditions under which alone such development is possible. They claim the loyalty and service of the individual, not as superior forces which he cannot evade, but as the media through which he has grown to the mastery of his own life.[1]

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[1] Hetherington and Muirhedd, *Social Purpose*, p. 130.

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BOOK REVIEWS

EDUCATION FOR MORAL GROWTH. By Henry Neumann. New York: D. Appleton and Company. Pp. xii+383.

This is an excellent book upon a subject that has been much discussed in many lands and under various titles. It "invites teachers to consider how many opportunities to promote a better life for our world lie in the moral resources of the school." But it addresses itself not only to teachers; it will prove helpful to parents and to all who are interested in the moral education of the young. The pages of the work are full of wisdom, and they are written in a style that reveals the cultivated mind. One is impressed with the author's discriminating judgment, his reasonableness, his fine temper, and his eminent fairness: he is not a special pleader but a philosopher who has had practical experience as a teacher of ethics and education in the Ethical Culture School established by Professor Adler, and who has already made a name for himself as a writer in his field.

Dr. Neumann regards as one of the world's richest spiritual assets the idealism of the young, and it is to this that he would have us make our appeal in ethical instruction. He believes that "far more lives today are left empty by lack of high ideals than are ruined by downright criminality, over which it is easy enough to arouse alarm." He points out that:

> The dangers of our democracy are not confined to the perils of illiteracy or of violent radicalism. A more persistent menace to progress, less obvious, and therefore the more deadly, is the fact that the number of persons in any community who do any prolonged, serious, intelligent thinking upon fundamental ethical principles is certainly smaller than the number of those to whom life is a game to be played no better or no worse than everybody else plays it.

The problem is to find a centralizing motive to the excellent life, and this, our author says, will be supplied when our cultural agencies hold up as their justification the progressive remaking of democratic society. Here we might seem to be falling back upon the current popular shibboleths of "citizenship" and "social efficiency," but Dr. Neumann's meaning goes much deeper than that. For him the conception of democracy is not a mere political but an *ethical* ideal: "democracy itself is worth while only so far as it encourages the growth of the highest in

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the human personality"; democratic personality is not to be taken as a means to other things, but as "the world's sublimest hope." He lays bare the ethical principles underlying the notion of democracy, showing in what freedom, equality, rights, really consist. "Political liberty is to be cherished for the chance it affords the common man to share to the full extent of his special powers, the task of improving the relationships in which he lives." "In an ideal democracy this development of personality in each is encouraged by the free cooperation of all." What education can do to lay the foundations of public spirit is set forth particularly in Part III, which bears the heading "The Resources of Today and Tomorrow."

The ethical philosophy upon which Dr. Neumann builds, the cornerstone of which is the conception of the worth and dignity of the human personality, is the philosophy which has been presented so finely in recent years by Professor Felix Adler. Like his teacher, he also emphasizes the worth of unique personalities, a teaching that needs to be stressed in our democracy, which is so ready to misinterpret the real meaning of the doctrine of equality. He insists on political equality because he believes that it alone will make possible the development of unique individuals, that with such equality "the valuable inequalities will be freer to enter into more fruitful interplay." Moreover, the doctrine of equality is here appealed to as a principle of moral order; men, to be sure, are not equal in capacity, but the democracy assumes them to be equal in the sense that all have the will to do right and that they can will to live right lives. It pays them the great honor, as rational beings, of assuming that they are capable of appreciating their responsibilities and are trying to live up to them. Uniqueness is not conceived as letting-one's-self-go, as caprice, lawlessness; indeed, "the highest kind of freedom is to do one's duties." "Personality is as little possible without self-discipline, as the proficiency of the musician or athlete without severe courses of training." In emphasizing the necessity of self-discipline, "the long patience," responsibility, Dr. Neumann may not be striking a popular chord, but he is pointing out to our soft age the only road on which character, unique or otherwise, can be formed.

In the second part of the book Dr. Neumann considers the contributions which have been made to America's educational ideals, examining and appraising the Puritan offering, the spirit of nationalism, the tradition of classical culture, the contribution of modern science, the demand for vocational fitness, and the pragmatist criticism. This portion of the work has been done remarkably well; in the short compass of one hundred and twenty pages the merits and demerits of these important movements

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are brought out in a clear and telling way—in a way possible only to a mind that has thought the subject through. The reviewer wonders, however, whether the author has not been unduly severe in his treatment of classical culture. He cannot convince himself of the soundness of statements, like the following, as valid arguments against classicism.

> But the chief count against the classical training is that in the main it has helped to keep the "cultured" classes, even though they have not always been the wealthy classes, too closely wedded to the side of the existing order. . . . . Most of the members of the educated classes in America and Great Britain proved themselves on the side of things as they were. Although a minority of their number did valiant service in the championship of causes now recognized as just, their followers did not come either from the colleges or the pulpits in anything like the numbers that a less conservative training might conceivably have furnished. . . . . Why is it that today so much of the business of advocating needed changes is left to the unscholarly agitator? . . . . Where are the men and women who have had the advantages of a college training, who have had the opportunity to weigh the facts, not as participants in the struggle themselves, but as persons qualified to speak just because they are not tempted to be partisans? Why are they not taking the lead?

Well, we may ask, where are the engineers and the chemists and agriculturists and the lawyers and the architects and the physicians and the great hordes of trained and untrained men and women who have not been unfitted by classical studies to be on the side of things as they are not? Why are *they* not taking the lead? Manifestly, this question cannot be answered offhand, by a simple reference to any scholastic curriculum. The German Revolution of 1848 was largely the work of classicly trained men,—it was contemptuously called a "professors' revolution"—they were on the "wrong" side; in 1914, and long before, the German academic world was for the most part on the "right" side; where it stands today I do not know. How much the study of classical civilization has had to do with the rise of the modern democracy, in France and in the United States, is a matter of speculation, but there can be no doubt that the influence of the classical political ideas upon eighteenth-century thought and institutions was considerable.

Part III of the book is devoted to the discussion of the topics for which the foundations have been laid in everything that precedes. The question of direct moral instruction and the objections which have been raised against it, and the moral values to be found in the various studies, receive careful treatment. Then follow chapters on "Native and Acquired Promptings," "The Power of the Feelings," "Religious Education," and "The Teacher." All these subjects will be most helpful to

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teachers who are engaged in teaching morality, whether it be directly or indirectly, but they must take to heart the author's wise counsel: the teacher must form some conception of "better life"; he must be moved to think out his convictions for himself; his ethical principles must be born of his own experience and his own reflections. It is not necessary for him to discuss moral philosophy with his pupils, nor is he asked to adopt Dr. Neumann's system; but he must have his own ideas "properly orientated," And if, before he undertakes to teach anything whatever, in any type of school, high or low, he will ponder deeply over the fine chapter on the teacher at the close of the book, and let it sink into his mind, he will prove himself worth while, even though he say never a word about ethics.

FRANK THILLY

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SHORTER NOTICES

POLITICAL ACTION. By Seba Eldridge. Philadelphia: J. B. Lippincott Company, 1924. Pp. xviii+382.

This is the third volume to appear in the Lippincott Sociological Series. It undertakes to apply "a naturalistic method" to the meaning and promise of "the problems of capital and labor, the future of representative government, the struggle of social classes for power, and the use of 'direct methods' in the furtherance of group interests." By a heavy emphasis upon the biological *given* in human nature and by a vivid presentation of the ease with which selfish interests commit man's irrational drives to ulterior ends, the author succeeds in painting a picture so dark for democracy as to challenge either despair outright or heroic efforts on the part of the children of light to wrest from the children of this world "the suggestioning agencies" now available for social control.

T. V. SMITH

PRINCIPLES OF SOCIOLOGY. By Frederick A. Bushee. New York: Henry Holt and Company, 1923. Pp. xiii+577.

Meant primarily as a textbook for undergraduates, this volume aims more at an acceptable organization of material already available than at the presentation of new data. The emphasis throughout is upon genetic factors in the social process. The physical and biological bases of society are given prominence rather than the psychological, for the author believes that the latter "may best be developed as a separate branch of the science." Morality "in the absolute sense" is defined as "that form of conduct which will produce the maximum of life"; but, since there is no single unchanging form of conduct that leads to that happy consummation, absolute morality, save as a lingering ideal, must abdicate in favor of "that conduct which is definitely approved by a particular group." The treatment is solid, the style clear, the organization of a wealth of material singularly good.

T. V. SMITH

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PSYCHOLOGY AND POLITICS. By W. H. R. Rivers. With a Note by G. Elliot Smith, and an Appreciation of the Author by C. S. Myers. New York: Harcourt, Brace and Company; London: Kegan Paul, Trench, Trubner and Company, 1923. Pp. vii+181.

This volume of essays, published posthumously, is the third of the late Dr. Rivers' to be included in the International Library of Psychology, Philosophy, and Scientific Method. The first three essays—remarkable in that they were delivered as election addresses while he was a candidate in 1922 for Parliament—bear on the general topic of the relation of psychology to politics. Their chief significance lies perhaps in their dramatic way of expressing the hope that scientific methods may yet be applied to the solution of political problems and in recording the belief that the most promising approach to this end is the psychological. The other three essays were also used as addresses: "Socialism and Human Nature," "Education and Mental Hygiene," and "The Aims of Ethnology." The publication of these occasional utterances completes for public inspection the work of a well-known mind, and is fittingly concluded with an evaluation of the author's work by a friend.

T. V. SMITH

HUMAN VALUE. By Henry Sturt. Cambridge: Cambridge University Press, 1923. Pp. ix+138.

Our author consciously follows the Greek tradition in treating ethics and politics as indissoluble. He is at one with J. S. Mill in holding that, strictly speaking, no proof is possible of an ultimate moral principle. Absolved thus from the necessity of being dialectical, he goes in quest of the fundamental principle of morality. He goes warned, however, by modern psychological tendencies that "the chief element in virtue . . . . must be a natural human motive; that is, one which impels men to act, apart from deliberate reflection." Discerning difficulties in all traditional norms—Perfection is too far away, Moral Law too abstract and rigorous, Reason too cold and aristocratic, and Benevolence too susceptible to sentimentality—he makes distinctions until an answer is found that is perfect, at least in form; that is, it is circular. The highest good is "appreciation of what is good in man." As regards the circle, the author reassures us that "we always commit a logical circle when we try to explain the nature of an ultimate quality."

Taking this, then, as the chief moral good, it turns out, in successive chapters, that "institutions are good in proportion as they are conducive to appreciation of human value"; that "the basis of any particular virtue is appreciation of a certain class of objects, which are human beings or human qualities"; that the chief element in art, literature and science "is an appreciation of human value closely parallel to that which is displayed in morality"; and that the "Higher Individualism" is pride in those capacities and tendencies in one's self that make for a growing appreciation of what is good in human nature in general.

Every democratic reader will find something substantial to treasure about this book. One who does not like the circle, can emphasize the style. In terms so simple as practically to defy misunderstanding the author has, within the narrow compass of little more than twenty thousand words, set out an ethical theory, come to terms with important historical competitors, and oriented it in the rich cultural and practical life of today. Moreover, the circle might be exorcised if one would face G. E. Moore's "naturalistic fallacy" as unafraid as our author braves the terrors of logical circularity. If one does not like the point of view, he can admire the skill with which the theory is applied to practice. For the virtue of any ethical theory lies, as the author sees,

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in the service it can render the co-operative spirit in its onslaught against all that alienates human loyalty from a common life.

T. V. SMITH

FREEDOM OF THE MIND IN HISTORY. By Henry Osburn Taylor. New York: The MacMillan Company, 1923. Price, $2.25.

This brief essay, the author's West Lectures delivered at Stanford in 1920, proceeds, as students of the history of philosophy well know, from a profoundly learned mind. Henry Osburn Taylor has probably read more of the written products of the human mind than any other living scholar. At the very least it is a matter of some moment to other students to know what such a man considers momentous in the history of human thought. This they may discover in the present essay.

The book contains a single thesis. "It is this: I conceive progress, by which I mean the increase of human well-being, to be the achievement of human faculty and the divine power. It seems to me to issue from the unfolding of the free energies of the human mind empowered and sustained by the creative and loving mind of God." The problem is to exhibit that such is the character of the history of thought. But the author realizes "the insufficiency of my argument and the inconclusiveness of my proofs," and proposes no more than to "supplement the one and the other with pointed illustrations from the quiver of history, in the hope of serving the time-honored opinion which I hold. . . . . Our search is for salient examples of the free action of the mind." He discusses briefly the political life and thought of the Greeks and Romans, and finds much in them that is free, though brute force lingers not inconspicuously in the background. The restless search of all peoples for the higher truths of religion is less amenable to deterministic discount; the stalwart protestantism of the European reformation still less; the free swing of modern metaphysics and of contemporary science least of all.

"Whither does the tale seem to point?" the author asks in the end. "Only brisk and shallow minds profess to understand this great matter, profess to see what it all means, or deny all meaning to it. Most shallow and self-limited are those who discern physical law portending human chaos; as if the vast evolving web of natural life, with its infinite adaptations and pervading beauty, should result in a meaningless confusion and a wrecking of that state of man which the long processes of nature—or the spirit of God—finally made possible. We simple folk do not fully understand it all, nor can we arrange everything in clear causal sequences, and declare the specific *rationale* of each event. We can only assemble such elements as we perceive of the stupendous movement, and ponder upon their values, while admitting in honesty that our judgments are likely to follow our temperaments."

Judgments do follow temperament. Indeed, temperaments seem sometimes to serve in judgment's place, discharging it altogether. The present reviewer would no doubt be accounted among the brisk and shallow should he admit that the paragraph just quoted strikes him as simply amusing rhetoric. Henry Osburn Taylor says "We simple folk do not understand"; yet in his preceding sentence he itemized his information as follows: (1) the spirit of God is identical with the processes of nature; (2) the universe is pervadingly beautiful; (3) physical law does not portend human chaos; (4) natural process is not meaningless. The analysis of such a passage is amusing just because the passage itself is not analysis. It is an expression of emotion. "Hail to the human mind, and hail to man!" says the author. "Hail to the progress of mankind!" Just so.

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Another definition, Robert Lowie's, states the historian's business as follows: "The historian (ethnologist) cannot permit his task to be predetermined for him. If there are laws of social evolution, he must assuredly discover them; but *whether* there are any remains to be seen." Viewed in the light of this definition *Freedom of the Mind in History* is not a scientific study. It is an expression of faith with selections from the lives of the saints. Taken as such, and not put to a use for which it is not built, it is a powerful and moving and, of course, profoundly learned essay.

C. E. AYRES

REED COLLEGE

HUMAN EFFORT AND HUMAN WANTS. By Logan G. McPherson. New York: Harcourt Brace and Company.

"By reducing the great economic laws to their lowest terms and economic phraseology to the simplest expression, the author has sought to make the significance of economic activity clear to the man in the office, on the street, on the farm, to the family in the home, and the youth in the schools," says the publisher. A subtitle notes that the book offers an interpretation of economic activity in relation to human life—not exactly the same thing. This is one case, however, of the publisher's blurb mirroring the book more accurately than the author's own characterization. *Human Effort and Human Wants* is a quite simple, diffuse, and unpretentious exposition of a considerable volume of elementary information, chiefly economic. None of its factual material is in any degree recondite. Nor does it essay to solve any esoteric problems. The book attempts no such interpretation as Henry Clay sought to make in *Economics for the General Reader*. Neither does it present any such orderly survey of economic activity as may be found in no less accessible style in Marshall and Lyon, *Our Economic Organization*. A great deal of the economic exposition is intended to familiarize the reader by extended definition and illustration with the many terms and locutions that are the common parlance of economists and business men. The discussion of human wants is a simple elaboration of the obvious desires of ordinary men of the present social order, and a correlation of them with the main outlines of the prevailing economic machinery. An excellent book, in short, for people who have done no previous reading in the field and cannot be presumed to interest themselves further in it.

C. E. A.

THE ATTITUDE OF HIGH SCHOOL STUDENTS TOWARD MOTION PICTURES. By Clarence Arthur Perry. National Board of Review of Motion Pictures, 1923. Pp. 54.

This is a statistical study "based upon the returns of a questionnaire circulated by the National Committee for Better Films, affiliated with the National Board of Review." The answers to the questionnaire were tabulated and analyzed in the Department of Recreation of the Russell Sage Foundation. Through the questionnaire submitted, it was sought to determine the extent to which high-school students attend motion picture shows; whether such attendance is in the company of parents, other members of the family, other friends, or without company of any sort; preferences as to actors and actresses and as to types of pictures; adverse criticism as to photoplay output; and estimates as to the value of motion pictures for educational stimulus and occupational guidance. The data compiled from the answers to these questions, the author thinks, point to conclusions of an encouraging character with refer-

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ence to the extent of motion picture attendance among high-school students, i.e., that such attendance is not excessive; with reference to the standards and tastes revealed in preferences as to screen performers and performances, and with reference to the educational possibilities of the motion picture. The study is commendable for the manifest importance of its aim, and for the intelligence and care with which it was made.

J. R. GEIGER

ESSENTIALS OF ECONOMICS. By Charles William Heathcote. Boston: Richard G. Badger, 1923. Pp. 266.

This book, consciously adapted to the young, seeks not primarily to inculcate economic theory but through a presentation of elementary economic facts to stimulate "a higher regard, larger patriotism, more responsible zeal, and unselfish service for our nation and its institutions."

T. V. S.

ECONOMICS FOR EVERYMAN. By James Edward Le Rossignol. New York: Henry Holt and Company, 1923. Pp. vi+335. Price (library ed.) $2.15; (student's ed.) $1.72.

This book is admirably adapted to do what its title suggests. It is not offered as a substitute for genuine insight in economics, but is meant to encourage every man to work for a sound understanding of the economic order. It is one of the few introductions to the study of economics that can serve to get the average man in a mood to be introduced to further study. Simply, interestingly, and yet soundly it sets out the main factors in our economic life, without, however, losing sight of that larger social setting which history and ethics combine to give. Each chapter is followed by a list of more advanced readings and a set of review questions.

T. V. S.

THE ETHICAL TEACHING OF JESUS. By Earnest F. Scott. New York: The Macmillan Company, 1924. Pp. xii+133. Price $1.50.

Though believing that the ethical cannot ultimately be divorced from the religious teaching of Jesus, the author, recognizing that it is the ethical emphasis that now most interests men and that has preserved the identity of Christianity through various stages of change, seeks to detach and to present on its own merit the moral philosophy of Jesus. It is admitted that Jesus did have an "interim ethic"; but it is argued that beneath this reluctant, though sincere, capitulation to the spirit of his time, he had a true instinct for the eternal moral verities. Like other great ethical teachers, he builded wiser than he knew. When all the provincialisms are admitted and forgotten, the moral teaching of Jesus possesses permanent validity because of its "inner fruitfulness."

T. V. S.

PEACE AND BREAD IN TIME OF WAR. By Jane Addams. New York: The Macmillan Company, 1922. Pp. ix+257. Price $1.75.

With the insight and imagination and sympathy that have come to be associated with whatever she does, Miss Addams presents "a brief history of the efforts for peace made by a small group of women in the United States during the European war, and of their connection with the women of other countries, as together they became organized into the Women's International League for Peace and Freedom." The book is as much psychological, however,

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as historical. Throughout the deep-moving plea for peace and for the bread which peace alone makes possible, there sounds the strain of loneliness which the social soul feels when to follow its ideals it must turn away from its group. The ethical problem that haunts the entire narrative is: How may loyalty to one's dream, the ideal order, be maintained in the face of outer questioning and inner doubt until it stands revealed as a kind of higher loyalty to the old order transformed by faith? This is a problem in ethics that no democracy can ignore with impunity.

T. V. S.

RECENT CHANGES IN AMERICAN CONSTITUTIONAL THEORY. By John W. Burgess. New York: Columbia University Press, 1923. Pp. xi+115. Price $1.75.

Professor Burgess believes that up to 1898 we had preserved our traditional emphasis upon liberty and individual responsibility. True, we had modified it now and then in the interest of social justice, but we had not seriously impaired American individualism. After that date, however, we drifted, more dangerously each year, but still in sight of land until 1914. Then we hauled in our anchor and put out to the open sea. With the Supreme Court itself "come under the spell of war and socialism," we have since then had no check upon our mad career toward collectivism. The Sixteenth Amendment leaves property so unprotected that government may now "take what it will from whom it will"; the Eighteenth Amendment further impairs individual liberty; and the Nineteenth Amendment, by inviting women to exert their influence through political channels, now makes it necessary for government officially to undertake the charitable activities that hitherto the women have done unofficially. These amendments are paralleled by equally iniquitous statutes, such as the "Espionage Act" of 1917. And the end is not yet.

T. V. S.

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THE INTERNATIONAL JOURNAL OF ETHICS

Volume XXXIV JULY 1924 Number 4

THE EMERGENCE OF NATURALISM[1]

ROY WOOD SELLARS

It has been suggested by a witty writer that every system of philosophy ought to account for its own appearance. This seems to me an excellent suggestion. Following it out, I have asked myself how I would account for the appearance of naturalism.

There are clearly two ways of approach to this interesting problem, the historical and the analytic. The first asks questions like the following: Under what conditions has naturalism emerged? Has it ever appeared only to disappear again? Is naturalism growing in strength today? To what factors does it seem to owe its growth? The analytic way of approach concerns itself with the fundamental ideas underlying naturalism, its contrast with supernaturalism, and its relation to the world as known. Any systematic study of the appearance of naturalism would involve both these ways of approach. What I can offer, however, is only of the nature of a sketch in which both points of view will be implicated. The struggle between naturalism and supernaturalism seems to me the most thrilling of the deeper movements of the human mind. To glance at it from its vague beginning to its sharper formulation in our own day, to note the opposed principles involved—all this is in the highest degree fascinating.

Both naturalism and supernaturalism have taken many shapes. On the whole, naturalism has been blunter and less

[1] Presidential address given at the April meeting of the Western division of the American Philosophical Association, 1924.

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subtle than supernaturalism. From the dialectical side this has been a weakness. It has exposed it to the attacks of its subtle opponent. During the nineteenth century particularly, idealism was so largely in alliance with supernaturalism, or was used by supernaturalism to such an extent, that to many the cause of naturalism seemed lost. But during the last two decades many surprises have occurred in philosophy. The growth of pragmatism and realism has altered the situation to an amazing degree. A subtler or, as I would prefer to phrase it, a more adequate type of naturalism has at last arisen. I do not think that it would be erroneous to speak of Dewey as a naturalist. In their own fashions, Santayana, Russell, Lloyd Morgan, and Alexander are likewise naturalists. And in his own way, Bosanquet, though an idealist, came very near to naturalism. If we picture the struggle between naturalism and supernaturalism as a wrestling match between two antagonists, it is clear that naturalism is slowly breaking its opponent's grip. But is this the third fall? Who can say?

Naturalism has in the past awakened many moods and will continue so to do in the future. There is the mood of defiance, the mood of despair, the mood of mystic exaltation, and, lastly, the mood of sober acknowledgment. Why this variety of attitudes? Ultimately, I suppose, because man has not yet had time to become adjusted to his world.

But, you may say, is not that curious? If man is a part of the world, how can he help being adjusted to it? The reply is, I think, simple. Man is a plastic organism; he is a conscious creature with changing desires and fluid capacities. His adjustment to the world is not mechanical but a matter of interpretation. He possesses no innate knowledge of the world and therefore no preformed adjustment to it. By inheritance he does not know what to expect, what to hope, what to fear. He must learn by experience; and, at first, he is almost as apt to learn wrongly as rightly. As a matter of historical fact he has always learned both rightly and wrongly

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at the same time. Even his arts and crafts have had a background of myth. We could not expect man to hold his mind open about difficult things like life and death, the origin of the world, the sanctions of good and evil. Ideas about all these things grew up in his mind by the use of analogy. He interpreted the world in terms of his own life. He did this inevitably and did not at first realize what he was doing.

Let me supply an analogy. An older generation finds it hard to assimilate new ideas. They conflict with the interpretations which these men and women have cherished. Hence they seem to challenge the very rationality of the world. What! can the earth be round! What! can the blood circulate! What! can species originate through natural changes! And so on through a list of revolutionary changes and exclamations. And the adjustment takes place with the younger generation to the extent that the old do not indoctrinate it with their prejudices and emotional demands. To the educated people of today biological evolutionism is a matter of course. They see nothing in it that is surprising or disheartening. And we are told by physicists that relativity will become a natural outlook to the students of the next generation, that they will not find it as disconcerting and baffling as the majority of people find it now, the difference being that our minds are set in old forms and it is hard to create new ones.

These adjustments are made more easily and quickly by some than by others. Those who make them often find it difficult to appreciate the emotional turmoil which their outlook awakens in people wedded to other views. How unnecessary all this excitement is, they feel. And yet one of the most tragic features of history has been this struggle between different religions and different moralities. Man's world is for him the world as he understands it, and though his understanding be largely false, it is this idea of his which dominates his life. It is held fiercely or tenderly but, unless skepticism has entered to undermine it, firmly.

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Words are often used very conventionally. Thus, anyone who accepts naturalism and does not seem frightened by the outlook which it involves is designated a Stoic. But to such a one there is nothing stoic in his attitude. To him it seems just rationality and sanity. I am an organism of such a nature, capable of such and such enjoyments and activities in established concourse with other intelligent organisms. There was birth and childhood, the fervor and uncertainties of adolescence, the work of manhood, the discipline of thought and action, the gradually increasing wisdom and serenity of middle life. Self-knowledge has grown with knowledge of the world. And so I look out upon life as spectator and as agent with some sense of what it all is like. Fairy stories and myths are delightful in their *genre* because they can be appreciated without being believed in. But the real world is definite, though full of adventure. What of stoicism is there in such an outlook? He who calls it stoicism is guilty of a fallacy. He reads into it the emotional tension which the idea of such an outlook awakens in him. But we must remember that he has not yet made the adjustment. He can understand the outlook, but he inevitably attaches to it his own reaction. "How lonely and unsatisfying such a world!" is his thought. "By no means," we must reply. "It is quite a matter-of-fact world in certain respects and quite thrilling in others. Simply, the expectations and demands which occupy so large a part in the thought of non-naturalists have vanished. Usually something pretty positive has taken their place, an interest in social affairs, in art, in science, in speculative reflection."

Now, in a period of transition like our own, the contrast between the old view of the world and of man's life and the new which is forming is necessarily sharp. People gulp as they cross the line between them. The naturalist feels, perhaps, heroic or dramatic; the supernaturalist shudders at the picture he draws of a world not dominated from on high by human values. Conditions are obviously favorable to rhetoric and sentimental-

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ism, to unstable and overtense attitudes. The atmosphere is much like that which this generation has felt during and for several years after the war. How few people one met who could think straight and see the many angles to all the questions! Well, when it is a matter of world-outlook and philosophy of life how few there are who have to any extent rationalized their life and calmed down!

But it is with the emergence of naturalism that I wish to concern myself. Naturalism is itself a quality or outlook which has emerged during man's history and is thus an instance of that novelty which evolution brings and which thought must recognize. At first hesitating and vague, it has grown in clearness and assurance with the centuries. How irrecoverable for us is the world of primitive man! We can have some measure of hard-won knowledge about it, gleaned by careful research and delicate inference, but as for acquaintance with it, that is gone forever. We know that early man respected and almost envied the animals with their speed and strength. He recognized no such boundary between himself and them as later arose to consciousness. Animal totems, animal gods, animal masks—all these signify a stage of immersion in the animal world which it is hard for us to realize. And his world must have been one largely of perception and of perceptual thinking, of habit and shifting emotion. And after this came magic and ritual and dim beliefs of survival and growing craftsmanship. Mana, tabu, magic, invisible agencies, shadowy presences in times of emotion, terror, hope, rejoicing, the shrewdness of everyday life, emotional instability—such terms give us pictures and responses which remove from us the world of law and measurement which science has built up. By an effort we drop back into a dimmer, less closely knit world. And after this came the settled tribe, the stage of agriculture, the city, commerce, nations, arts, the beginnings of civilization. With organized society emerged new ideas, new methods, new standards. It is this coming of new activities

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and outlooks which I wish to stress. Ideas struggled with ideas; against a world of mysterious agencies was here and there set a world of order—a realm of nature and natural happenings.

Naturalism is unthinkable apart from reflection. Its dawn demanded conditions which were late in arriving. Why this is so we shall see later in detail. But it is surely obvious that naturalism implies the idea of nature as a realm of definite order and a rejection of the tendency to people the world with invisible agents like unto man. It involves an insight into events, a strong suspicion of the systematic and quasi-mechanical linkage of all changes, an appreciation of the conditions and nature of human behavior. Such an outlook could arrive only gradually; and is scarcely thinkable apart from science.

Inevitably, much of past naturalism was more a prophecy than a fulfilment. It was mixed with other elements, not yet rejected, and was a direction and emphasis rather than a perfected growth. And we must remember that man's mind works freely and critically only under favorable conditions; and such conditions have seldom long endured in the past. There is something tragic in the thought how easily the favorable conditions vanish; an exhausting war, a prolonged economic crisis, invasion, and something of the fine edge of social and mental energy is lost. There is social devolution as well as social evolution.

In the far-off days of primitive man there was neither naturalism nor supernaturalism as we understand these terms. The first stage was that of ignorance. Workers in Greek religion and anthropology have adopted the expressive German word, "Urdummheit," which Gilbert Murray translates as "primal stupidity." Let us try to appreciate the situation in which primitive man found himself. He was ignorant, imaginative, and helpless. The world was an enigma read in terms of his hopes, fears, and imaginings. Some hold that

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the gods were, at first, the collective desires personified in a vague way and given a name.

> The extraordinary security of our modern life in times of peace makes it hard for us to realize, except by a definite effort of the imagination, the constant precariousness, the frightful proximity of death, that was usual in these weak ancient communities. They were in fear of wild beasts; they were helpless against floods, helpless against pestilences. Their food depended on the crops of one tiny plot of ground; and if the Savior was not reborn with the spring, they slowly and miserably died.[1]

What wonder that ritual, myth, and magic flourished in such a setting!

The theory of evolution has given tremendous significance to history, for we can now understand its dramatic import. It is the story of man's struggle upward from impotence and ignorance to the semi-mastery which is now within his reach. And to the Western mind nothing is more thrilling than the rise of Greek civilization, the brilliant first conquest of life by intelligence. Though it was thwarted and never came to completion, there is in it a prophecy of what we moderns may do, what we should do.

There were two closely related currents of liberation in the movement of Greek civilization—religious and moral reform on the one hand, and the rise of science and philosophy on the other hand. Though we separate them thus for the sake of presentation, it was the one factor of human intelligence which was manifesting itself in both.

The Olympian conquest, which reached its culmination in the fifth century, represents a change of spirit and outlook, an emancipation from the "Urdummheit." "The Hellenic race," writes Herodotus, "was marked off from the barbarian as more intelligent and more emancipated from silly nonsense." There are distinguishable in this current of reform three main elements: the moral expurgation of the old magico-religious rites having to do with food supply and child supply, the

[1] Gilbert Murray, *Four Stages of Greek Religion*, p. 49.

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introduction of more intellectual order in religion, and the development of the cult of the city.

Greece had its prophets in the seventh century, those of the shrine at Delphi. The religion of Apollo, there established, blossomed out into a spiritual attitude of surpassing charm.

> Its good tidings were very simple; so simple indeed and so sensible that only a Greek oracle would have dared proclaim them—the duty of self-control. They are summed up in two sayings of two words each: *Know yourself* and *Be moderate*. . . . . But how can I be moderate while men rage furiously around me? asks the worshipper. "By gentleness," replied the god, using a word which does not bear translation, "by controlling your temper, by thinking good of men and not evil, by cultivating thoughts and habits of mind which 'save' instead of those that excite and corrode." For this is the meaning of that gentleness or self-control which henceforth ranked as one of the cardinal marks of the Greek spirit.[1]

This moral and religious reformation was gradually extended by reflection. And the awakened Greek mind began to seek to understand the nature of things. The idea of nature as an orderly realm of events was born. What place was left for the agency of gods and spirits is not always clear. Nature was crystallizing out from the vague background of primitive beliefs. This movement came to a head in the materialistic systems of Democritus and Epicurus. And something of the same outlook is revealed in the position of Aristotle. Yet the philosophy of Plato and Aristotle was so constructed as to make less obvious the break between naturalism and supernaturalism. Had this not been so, neo-Platonism and medieval Aristotelianism could not have found a support in it. The dualism between form and matter, idea and appearance, lent itself to manipulation. But Aristotle's cold theism did not arouse enthusiasm, and his successors tended to lapse into naturalism.

Greek healthy-mindedness did not long last. The great writers and artists and thinkers were products of the free

[1] Zimmern, *The Greek Commonwealth*, p. 120.

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city-state; and when this declined and was overwhelmed by outside forces, the buoyant, creative life of the classic period disappeared. Bit by bit there came what Murray calls the "failure of nerve." These little oases of human daring and confidence were overshadowed by a cloud, for the high hopes of the fifth century were seen to be impossible of realization. Something of the energy of life was lost. They had gone far, but the limits of their achievement were in sight.

There are two stages of this failure of nerve. In the first, reason retains her prestige, but the drive of social creativeness is lacking. In the second, even confidence in reason is lost. The new quality of life is hard to describe.

> It is a rise of asceticism, of mysticism, in a sense, of pessimism; a loss of self-confidence, of hope in this life *and of faith in normal human effort;* a despair of patient inquiry, a cry for infallible revelation; an indifference to the welfare of the state; a conversion of the soul to God. It is an atmosphere in which the aim of the good man is not so much to live justly, to help the society to which he belongs and enjoy the esteem of his fellow creatures; but rather, by means of a burning faith, by contempt for the world and its standards, by ecstasy, suffering, and martyrdom, to be granted pardon for his unspeakable unworthiness, his immeasurable sins.[1]

Man wandered long in the night of this loss of sanity. We shall have more to say of its causes when we come to examine this second stage which lasted until near the time of the Renaissance.

Epicureanism is a naturalistic philosophy of the first stage of social decline. Much injustice has been done it by popular tradition which identified it with gross pleasure-seeking. Just because it was naturalistic in its outlook, it was heartily disliked by many groups.

Seneca, a Stoic and no admirer of Epicureanism, writes:

> When the stranger comes to the garden on which the words are inscribed, "Friend, here it will be well for thee to abide; here pleasure is the highest good," he will find the keeper of that garden a kindly, hospitable man, who will set before him a dish of barley porridge and

[1] Gilbert Murray, *op. cit.*

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water in plenty, and say, "Hast thou not been well entertained? These gardens do not whet hunger, but quench it; they do not cause a greater thirst by the very drinks they afford, but soothe it by a remedy which is natural and costs nothing. In pleasure like this I have grown old."

Pleasure was for the brotherhood of the garden, the absence of pain, tranquillity, serenity. It would seem that the Epicurean ideal was a simple life in which the needs of the body were recognized but not stimulated, and this equable life was supplemented by the calm joys of friendship and of the mind. There seems to have been something very kindly, modest, and unaffected about the life of Epicurus and his followers.

Why, then, has Epicureanism been so much maligned? Chiefly because of ignorance and prejudice. We must remember that the Epicurean held himself apart from the general life of society and that he disbelieved in Providence and miracles. He was a rationalist and a naturalist who took pride in the fact that he had conquered ignominious fears and ungrounded hopes. Such an attitude has never been popular; and the hedonism, correlated with it, gave opportunity for gossip. Must not hedonism mean the mad pursuit of sensual pleasures? Let us remember the saying of Aristotle that men take their notions of happiness from the lives actually lived around them. And the majority who have not thought out a theory of conduct for themselves, but have simply submitted to a code because of supernatural sanctions, feel that they would give themselves up to profligacy if they did not believe in immortality. Probably many of them would not do this or else do it for a short while only until they discovered the natural sanctions of conduct. But because they have not thought these things out for themselves and have held to rigoristic standards by the sheer pressure of supernatural and social authority, they cannot understand free or rationally chosen morality. Luther said:

If you believe in no future life, I would not give a mushroom for your God. Do then as you like. For, if no God, then no devil, no hell.

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As with a fallen tree, all is over when you die. Then plunge in lechery, rascality, robbery, and murder.

And Massilon, the French preacher, wrote as follows:

If we wholly perish with the body, the maxims of charity, patience and justice, honor, gratitude and friendship are but empty words. Our passions shall decide our duty. If retribution terminate with the grave, morality is a mere chimera, a bugbear of human invention.

Probably the very setting of morality which supernaturalism stressed obscured for these men its natural sanctions. But is it difficult to understand why Epicureanism was disliked and maligned?

While naturalism and hedonism have often been associated, this association is not a necessary one; what is necessary is the connection of human values with human interests and satisfactions. Hedonism is a form which humanism easily takes during a period in which social endeavor is repressed and the individual driven back on himself. There is sufficient in hedonism to give it a strong appeal to those who have broken free from customary methods and standards. It presents itself as an obvious contrast to authoritarian or traditionalistic morality. "But why should I do these things and lead that sort of a life?" it is asked. "These activities do not interest me, do not give me pleasure; on what ground are they to be thrust upon me as duties?" The naturalist is a rationalist and a critic of traditional forms. And we must remember that the Greek city with its appeal to civic pride and loyalty had seen its best days long before Epicurus. The individual was thrown back upon his own resources. He was obliged to make the best of a rather depressing situation. A few quotations from a letter written by Epicurus to a friend will reveal to us the temper of the movement. The tone is reflective and quietistic. There is no thought of social progress. No horizons of intellectual achievement beckon this group on. We must remember that the Ancients did not possess the idea of progress. The limitations of the movement were, then, limitations of the time. He writes:

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Accustom thyself to the belief that death is nothing to us, for good and evil are only where they are felt, and death is the absence of all feeling: therefore a right understanding that death is nothing to us makes enjoyable the mortality of life, not by adding to years an illimitable time, but by taking away the yearning after immortality . . . . and since pleasure is our first and native good, for that reason we do not choose every pleasure whatsoever, but ofttimes pass over many pleasures when a greater annoyance ensues from them. And ofttimes we consider pains superior to pleasures, and submit to the pain for a long time, when it is attended for us with a greater pleasure. All pleasure, therefore, because of its kinship with our nature, is a good, but it is not in all cases our choice, even as every pain is an evil, though pain is not always, and in every case, to be shunned. It is, however, by measuring one against another, and by looking at the conveniences and inconveniences, that all these things must be judged. . . . . When we say, then, that pleasure is the end and aim, we do not mean the pleasures of the prodigal, or the pleasures of sensuality, as we are understood by some who are either ignorant and prejudiced for other views, or inclined to misinterpret our statements. By pleasure we mean the absence of pain in the body and trouble in the soul. . . . . It is sober reasoning searching out the reasons for every choice and avoidance, and banishing those *beliefs* through which the greatest tumults take possession of the soul.

It has been quite generally remarked that all the later schools of philosophy sought a similar peace, though in somewhat different ways. The Epicurean was the only frankly naturalistic school. Wise conduct needed no cosmic sanctions. The Stoic still postulated a world-reason, in some sense, the standard for his rule of life. The Epicurean maintained that the intrinsic character of experience gave the clue to reason as to what is desirable and what undesirable.

We have said little of the cosmology of Epicureanism because it has not been our purpose to present the details of the system. As is well known, Epicurus was not so much an originator as a man of strong personality, who took over the views of others and gave them prestige. It is Democritus to whom we must give credit for the world-view thus pushed to the front. Such changes as were introduced by Epicurus were not improvements. Mechanical atomism was an hypothesis developed to

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account for certain characteristics of our world, the changes which things undergo—birth and death, growth and disintegration, the spread of heat and cold. The very generality of the characteristics to be accounted for made the hypothesis itself general. It is sometimes said that ancient atomism was founded on mere speculation. Such a statement is misleading. It was as much founded on that co-operation of experience and reason which leads to theories as are the hypotheses of modern science. The difference is this, the data used were not specific enough. It required the accumulation of chemical and physical knowledge and the rise of the whole technique of experimentation, measurement, and mathematics before the specific atomic ideas of the present could arise. Reason cannot work apart from data; for these give guidance and content. It was inevitable, therefore, that this first sketch of the cosmos should be crude and inadequate, while yet true in its intention and point of approach. We must not look to ancient atomism for a solution of such problems as those of chemical change, the nature of living bodies, the relation between mind and body, the evolution of solar systems. It could but say that there must be integration and disintegration. The specific knowledge which guides our minds did not exist. And yet the spirit of rational exploration was there and, with it, a daring in interpretation which must always awaken our admiration.

The soul was for Epicurus a complex of atoms which disintegrated at death when no longer held together by the fleshly wrapping of the body. Buffeted by the winds, it soon dissolved in the air like mist or smoke. Here, again, we have an ancient conception which had long endured side by side with other views. Man is a part of nature. He comes to birth like the plants and like other animals, and after his little span of life disappears. We find the recognition of this fact in the Old Testament as well as in Homer. And the popular poem of Omar Khayyam draws the same analogy:

> The flower that once has bloomed forever dies.

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But how different this soul is from the integrated complex of neuronic systems which modern naturalism is beginning to identify with the soul! We realize, again, how tentative and external was his knowledge of the organism. Even to-day, despite the tireless investigation of biologists, neurologists, physiologists, and psychologists, how little is known of the working of the central nervous system! And yet death and what it involves is one of the oldest facts in human experience. Details will enable us to understand this stupendous event, but will not alter its import.

And so I could go on into other parts of this ancient naturalism pointing out technical inadequacies. And yet the central and admirable feature remains—a clear-eyed, courageous choice of a rational view of things, seen only in part, and yet felt to underlie the vast procession of nature.

Why, then, did Epicureanism have so little effect upon the ancient world? That it had many followers during several centuries is well attested by inscriptions. And it was not only men like Lucretius and Pliny and Horace who were influenced by it. It spread to the lowest strata of the population, for we find such epitaphs as "We are mortal; we are not immortal." "I was not, I was; I am not; I do not care." Why, then, did it die out? Because the world was not yet ready for naturalism. It died out for the same reason that Aristotelianism, which had taken practically the same stand, fell on evil days until, by a forced exegesis, it was pressed into the service of Catholic theology. In short, it could not resist the wave of mysticism and salvationism which swept over the Graeco-Roman world after the first century of our era.

The classic religions of Greece and Rome had been state and social religions, more concerned with the preservation of society than with the fate of the individual. Personal and family rites there were which aimed at the peace and well-being of the shade of the departed. But the future life had in it little to fascinate and intrigue the living. It is generally

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admitted by scholars that the situation was much the same for the Hebrews during the same period. But while this unattractive view of after-life was dominant, there gradually arose and increased a more positive and attractive doctrine concerning the next world. Immortality could be won by certain rites known to initiates. These rites often carry us back to savagery, to the eating of the totem animal, to magical words and anointments. While there were elements of this sort to be found in Greece, the main current of such ideas and ritual came from the Orient. The theory underlying the winning of immortality was, in the main, contact with the gods whose gift of immortality was only for initiates. Into the details of this development we cannot here enter. Suffice it to point out that this vitalizing contact of the individual soul with divinity was won by eating the flesh of the incarnate God or partaking of food which had magical affinity with the God. There can be no doubt that the Christian sacrament had its roots in these ideas, just as the use of oils and unguents in the ritual of the church rested on widespread beliefs in the magical efficacy of such substances which had long been used in the thermae and temples. Perhaps the use of ointments to preserve the body in embalming aided in the rise of these beliefs. This movement was next raised to a higher level by astrology and gnosticism. The heavenly gods and goddesses were more distant and less anthropomorphic. The contact with them must come through the spirit.

Virtue from on high entered into the neophyte and transformed him into a being like the divinities of heaven. He was glorified as a conqueror who had triumphed over demons and smitten down death; he was illuminated and penetrated by a supernatural light which disclosed to him all truth; he was sanctified and acquired unfailing virtue; he was exalted, that is to say his soul rose in rapture to the stars. Glory, splendour, light, purity, knowledge: all these ideas were confounded until they became almost synonymous and together denoted the transfiguration which was undergone by the soul called to rise to ethereal regions, even on this earth and while still joined to the body.[1]

[1] Cumont, *After Life in Roman Paganism*, p. 123. This is a fascinating and authoritative book which should be read.

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In the later Empire this movement had swept the older religion aside and become dominant. And those philosophies which had a mystical strain in them, such as Platonism, Stoicism, and Pythagoreanism, made their adjustments.

How far we are from the gospel of Epicurus and Lucretius! Death has no terror for the gnostic and the initiate, for, in the after-life, he will live in some celestial orb a life of peace and contentment rid of the evil and corruption of the body. Christianity was the culmination and victory of this oriental movement. Fortunately, it contained also a strong ethical strain which it had inherited from its social origins. Its victory was succeeded by the overthrow of the Empire by the northern barbarians and the intellectual darkness of the first part of the Middle Ages. But we need not bewail this overthrow, though it involved losses. The human reason was temporarily exhausted.

It is, I think, easy now to answer our question why rationalistic naturalism fell by the wayside. And may I in this connection call attention to the unjustifiableness of the statement, so often made, that truth will win out just because it is truth? Such a belief assumes that truth is an external force which somehow has the power to press itself upon complex man and hold him in its grip. But such a belief is pure mythology. Truth is but another term for knowledge, and knowledge has its conditions which are severe and seldom realized. Even if men desire the truth—an attitude which expresses a high degree of culture—they must possess the proper technique for its attainment. In short, error is far easier than truth. Men want what they value and value what they want, and truth is, at the best, only one of these things.

Only for a brief time, then, were social conditions and the state of men's minds favorable to free inquiry and to a naturalistic humanism. The Greek intellect had its short period of bloom in the free city-state and proved what it could accomplish in the way of daring analysis. But this period was all

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too brief. Even with Plato we find seeds of decay. Naturalism could not fight free and maintain itself. It was an anticipation and prophecy rather than an achievement. The knowledge on which it built was too thin and personal and with too little social prestige. The possibilities and temptations of supernaturalism loomed too great. Reason became the servant of emotion and imagination.

The emotional attractiveness of a positive belief in a desirable type of immortality was reinforced by the loneliness of the Roman Empire, which had become an immense bureaucracy crushing out initiative. It will always be hard for us to determine just how far later Roman life lacked intrinsic attractiveness. There is danger, I think, of exaggeration in Renan's theory that the thirst for immortality arose out of the unsatisfactoriness of everyday life. That there was pessimism abroad, and some measure of justification for it, need not be doubted. But pessimism is recurrent, and there is always sufficient ground for a portion of it. The fact is that the more intense religiosity of the Empire was not balanced by detailed knowledge of the world and control over it such as we possess.

The recovery from the dominantly theological interpretation of the world was slow. How definite and vivid a world that was is not always clearly enough realized, so gradual, after all, has been its disappearance from the minds of men. It has faded away and become dimmer, while not entirely absent, as in motion pictures the old scene is sometimes left and new events projected upon it. Anatole France writes:

> Nous avons peine, à nous figurer l'état d'esprit d'un homme d'autrefois qui croyait fermement que la terre était le centre du monde et que tous les astres tournaient autour d'elle. Il sentait sous ses pieds s'agiter les damnés dans les flammes, et peut-être avait-il vu de ses yeux et senti par ses narines la fumée sulfureuse de l'enfer, s'echappant par quelque fissure de rocher. En levant la tête, il contemplait les douze spheres, celle des éléments, qui renferme l'air et le feu, puis les sphères de la Lune, de Mercure, de Vénus, que visita Dante, le vendredi saint de l'année 1300, puis celles du Soleil, de Mars, de Jupiter, et de Saturne, puis le

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firmament incorruptible auquel les étoiles étaient suspendues comme des lampes. La pensée prolongeant cette contemplation, il découvrait par delà, avec les yeux de l'esprit, le neuvième ciel où des saints furent ravis, le *primum mobile* ou cristallin, et enfin l'Empyrée, séjour des bienheureux vers lequel, après la mort, deux anges vêtus de blanc (il en avait la ferme espérance) porteraient comme un petit enfant son âme lavée par le baptême et parfumée par l'huile des derniers sacrements. En ce temps-là, Dieu n'avait pas d'autres enfants que les hommes, et toute sa creation était aménagée d'une façon à la fois puerile et poetique, comme une immense cathédrale. Ainsi concu, l'univers était si simple, qu'on le representait au complet, avec sa vraie figure et son movement, dans certaines grandes horloges machinées et peintes.[1]

What were the forces which dissolved this narrow vision?

There were three forces, and these fundamental: change of interest, growth of self-confidence, and increase of knowledge. The story is an old one, and we can take for granted an acquaintance with its main outlines. The revival of learning and the consequent age of discovery and rise of science expressed a thirst for knowledge and a desire for activity and exploration. This complex stage upon which the Western World entered was of slow preparation and brilliant maturity. Europe gave a broader base for a steady advance than had the Mediterranean basin. When one nation lagged, another was ready to carry on. Interest had for long been shifting to this world. Activities of all sorts had multiplied. And there went with this change a joy in life and an unashamed interest in it. There was an increase of vital energy and a liberation of personality. All this presaged a return to humanism and naturalism, to something like, and yet different from, the classic age of Greece. Man was regaining his nerve.

It would be wrong to believe that human nature was ever completely repressed by religious supernaturalism. "There are abundant signs," writes Symonds, "that the native human instincts, the natural human appetites, remained unaltered and alive beneath the crust of orthodoxy." In high places we have

[1] Anatole France, *Le Jardin d'Epicure*, p. 1.

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the examples of Boniface VIII and Emperor Frederick II; and we should note the beautiful culture of Provence, with its poetry and courts of love, crushed out brutally by the church because of the presence of heresy. Signs of the same healthy activity of human nature are the student songs.

> The open-air enjoyments of the wood, the field, the dance upon the village green, are sung with juvenile lightheartedness. No grave note, warning us that the pleasures of this earth are fleeting, that the visible world is but a symbol of the invisible, that human life is a probation for the life beyond, interrupts the tinkling music as of castanets and tripping feet which gives a novel charm to these unique relics of the thirteenth century.

Social evolution is seldom as we could wish it. Society is so complex, motives are so mixed, false emphases are so easily made, narrow reactions so frequently occur. I presume that we can only be thankful that advances are made. The brilliant Renaissance degenerated in Italy, and Italy itself was overwhelmed by foreign invasion of a casual and brutal sort which served no genuine purpose. In the northern countries, the greater mental activity took the form of religious reformation. And then came the religious wars, the dynastic wars, the rise of one country and the decline of another. But, during it all, there was a slow but steady advance in knowledge and in political and economic experience. The shift of interest to this world was continually going on. The world was being explored, nationalism was increasing, knowledge was being accumulated, methods improved. It was not long before industrialism, democracy, humanitarianism, and secularism were on the horizon. And all this presaged a reappearance of those conditions which, in the ancient world, led to naturalism and humanism.

Let us remember that for the mass of the people of any era their outlook is a question of compromise and emphasis. To such a compromise Christianity lent itself admirably. All that was necessary was the gradual rejection from nature of the

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mysterious and miraculous until it became an orderly, almost self-sufficient realm. The very translation of God to the skies and his monarchical control of invisible agencies furthered this development. It moved in the direction of a dualism in which this world was set over against the next. Unwillingly, religion must needs content itself with this division. And yet this inevitable opposition divided man against himself. Supernaturalism hovered above him, beckoning him to regard this world as but a strange period of probation, upon whose outcome depended an eternal future life. So strong was the motivation of this outlook, so firmly were its institutions and sanctions intrenched, that otherworldism retained its power to check the triumph of naturalism. The result was a drift of opinion during which laicism became ever more dominant without being clearly thought out. Religion became sentimental and intermittent, while everyday life was ruled by industrial forces.

Into the intricate details of the struggle on the intellectual plane between naturalism and supernaturalism during the last three centuries we need not enter. Much of this struggle was futile because blind. Not enough was known about either man or the world. Hence, it was in the main an opposition between principles. And yet the steps in the advance of naturalism are suggestive. The attack by empiricism upon rationalism was one of these. Today we cannot accept either the empiricism or the rationalism of this earlier period, and yet we realize that the emphasis laid by empiricism upon experience and its conditions was an advance. The growth of psychological ethics with its stress upon the feelings and emotions and its appeal to human nature was likewise a movement in the right direction. In politics, naturalism appeared as the denial of the divine right of kings and the growth of the theory of contract. In every domain the medieval outlook was being discarded, but the new perspective was itself never clearly formulated. Each attempt soon betrayed itself to be

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premature. The movement of society was clearly away from the old outlook, but what was going to take its place was less certain. The maturity of a culture is not quickly reached even in these days of rapid change.

Let us follow a convenient division and distinguish between subjective and objective naturalism. These divisions do, of course, represent only a division of labor, or two paths to the same goal. In subjective naturalism we witness the attempt to assimilate man to nature, to demonstrate that there is nothing in his make-up that resists this assignment. Persistent as the efforts were, they missed success because the terms had been insufficiently analyzed. Nature was interpreted with man omitted; and then the problem to make man disappear into such an alien nature was insoluble. The method adopted was reduction. Psychology was to become physiology; physiology, chemistry; and chemistry, physics. By such a process of repeated translation the assimilation of man was to be accomplished. That nature itself contained natural levels so that assimilation by reduction could only be carried through by being untrue to nature was not grasped. Dead-level mechanicalism forced a Procrustean bed upon naturalism; gave it a false task and ideal. And its lack of success lowered its prestige. In objective naturalism we find the rejection of any interference with nature from the outside. Nature was ever more clearly conceived as a closed system. Obviously, subjective and objective naturalism were supplementary movements. Were the first successfully carried through, it would help the second by giving it internal unity and so enabling it to present a stronger front to supernaturalism. And the stronger the second movement became the more imperative was felt to be the naturalization of man.

The history of subjective naturalism is at once intricate and fascinating. In ethics it appeared as a basis for criticism of what was felt to be artificial and conventional in conduct. Thus the Cynic demand that men live according to nature was

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a rejection of social fashion in favor of the primitive and basic in conduct. But just because ethical criteria cannot be completely external to man, the Cynic standard was necessarily arbitrary and expressive of the personality of Antisthenes and his followers. Nature was an unanalyzed term and its limits set according to preference, as Aristotle took care to point out. Are not man's most cultivated interests natural? Who shall set the bounds to man's values? Thus, here at the very beginning of subjective naturalism we find the error of reduction. Soon, however, it was corrected. The Stoic took the Cynic standard and reinterpreted nature to make it identical with a world-reason. To live according to nature was to live in accordance with the reason immanent in both nature and man. Nature as a whole was thus lifted mystically to the heights. But satisfying as this may have been to the religious feelings, it did not solve the ethical problem. The uniqueness and relative autonomy of man was not grasped. The perspective was not pluralistic but monistic. Man's place in nature was as little understood as it was by the Cynics. In the revival of philosophical ethics during the seventeenth and eighteenth centuries, we find the gradual rejection of rationalistic ethics and its replacement by the ethics of feeling. For empiricism, reason stood for the a priori and the authoritative. That this psychological movement in ethics represented an advance is doubted now by few. It stood for an autonomous ethics as against a heteronomous or theological ethics. Its weaknesses were those of the first phase of empiricism.

In psychology, logic, and theory of knowledge, we find the alliance of subjective naturalism with empiricism. In modern thought this movement found its first important protagonists in British philosophy. Sensationalism and associationism were directed against rationalism. Sense-impressions are regarded as the standard. What is not reducible to them is in some fashion non-natural and fictitious. There is an element of this in Locke, but it comes out more clearly in the nominalism

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of Berkeley and Hume. Thus Berkeley regards matter as an unjustifiable abstract idea, and Hume tends to set identity and causality aside as fictions. Motivating this outlook was the protest against the traditional idea of reason as innate and distinct from sense. The result was a too hasty empiricism which tended to reject reason rather than to naturalize it. In psychology this same bias led to the extreme forms of sensationism and associationism. In these tendencies we have the more or less conscious attempt to assimilate man to nature without a remainder; to treat mind as an atomistic or mechanical system as atomism and mechanism were then conceived. In short, naturalism reflected the current, non-evolutionary view of nature.

What must be our judgment upon these various attempts to carry through a naturalistic interpretation of conduct and mind? Surely that they were movements in the right direction, but that they could not expect to be crowned with immediate success. We cannot call them premature, for the effort had to be made. No novel view arises in model form. The mistakes made in the history of the physical sciences were as great. But what scientist laughs at these first stages of his own field? He knows that insight comes bit by bit, that it is cumulative. He knows how great an advance each step was in its own day. And this, I maintain, should be our own attitude toward subjective naturalism, as first crudely sketched.

Movements of a comprehensive scope are necessarily slow. They must await knowledge and analysis. Much had to be done before subjective naturalism could take another step in advance. With Hume it seemed to lead to skepticism and phenomenalism. Among scientists, or among thinkers little inclined to the niceties of epistemology, its implication was materialism. And so we have the halt of the nineteenth century.

The curious separation between science and philosophy which marked much of the nineteenth century has often been

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dwelt upon. On the whole, romanticism had captured official philosophy. On the technical side the reason for this situation was the inability of modern philosophy to solve its problems. Empirical nominalism identified knowledge with acquaintance with sensations and images. Kantianism was agnostic in regard to a genuinely external world. Idealism denied the meaningfulness of a physical world. And this technical *impasse* or failure was encouraged by the supernaturalistic tradition, so that official philosophy was for long reactionary and uncreative. It marked time while science and industry and politics were undergoing revolutionary changes. Frequently philosophy became retrospective and reminiscent and little else than its own history. But I would be unfair to the philosophy of the nineteenth century if I left the matter here. It was not itself creative, but it served the useful function of criticism. It pointed out unsparingly the weaknesses of the subjective naturalism of the time. The list of such criticisms is long. Naturalism was seemingly helpless in the hands of dialecticians like Lange, Balfour, Sorley, Seth, and Ward.

But the concrete movement of science continued, exploring field after field and reducing it to order. The biological and social sciences were annexed. Psychology became experimental and closely allied to biology. Sociology with its kindred disciplines gained independence. In short, no domain remained exempt from scientific method. Can it be denied that the situation became intellectually unstable? We have the confession of James Ward:

> If with the history of science and the results of science before us we pass straight on to the construction of a philosophy, idealism has no chance. But, in truth, "modern science" hardly needs to *construct* its philosophy; for, without any conscious labor on its part, the naturalistic view of the world seems to stand out clearly of itself.[1]

But a thinker who makes such an admission must be very certain of the almost magical power of his epistemology if he undertakes to wave aside such a massive movement.

[1] James Ward, *Naturalism and Agnosticism*, Preface.

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We have given more attention to subjective than to objective naturalism because of its greater complexity. But we must glance briefly at this complementary movement.

Objective naturalism opposed itself to supernaturalism. It did so timidly at first and with willingness to compromise, but later more boldly and rigorously. Thus we have the deism of the seventeenth and eighteenth centuries, which held nature to be a self-sufficient system which God had created and set going, but with whose working he did not interfere. United with this outlook was the distaste for revelation and the confidence in human reason. The postulates of religion were still strong enough to suggest a natural theology worked out in the light of reason. We must not forget that other forms of naturalism adopted a pantheistic approach which tried to identify God with nature. To the orthodox this trend of thought was still more odious than deism, because it seemed to them that nature swallowed God. Farther to the left in this movement came the stricter form called "materialism." Foreshadowed by Hobbes in the seventeenth century, materialism came into prominence in the eighteenth century to sink for a time out of sight and then to reappear in the middle of the nineteenth century. But, as yet, materialism was technically inadequate. Its epistemology was crude, and it could offer no guidance for an interpretation of man and society. Thus we come full circle to the movement on the line of subjective naturalism.

And so we are brought to the flare-up of naturalism in the nineteenth century which accompanied the promulgation of a specific theory of biological evolution. For the first time biology came into sharp conflict with traditional views and was forced to grapple with the defenders of orthodox Christianity. It was inevitable that the abler advocates of evolutionism should seek to extend its application. But, as often happens, this application was made too hastily. Darwinism was carried over to ethics without due consideration of the

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characteristics of the new field. The value of evolution lay in the new perspective it engendered. Soon psychology joined hands with biology and began to investigate more deeply the origin and structure of human nature. In this junction the doom of the dualism between mind and body was prefigured.

It is not surprising that the first contribution of evolution to ethics was less than the basic nature of the new theory of man's place in nature seemed to warrant. If ethics has to do with human valuations, why should we expect to have a system of ethics deduced from biology? The corresponding attempt to build sociology upon biological analogies rather than to investigate social phenomena with new insight was doomed to the same failure. The inspiration was there and it gave daring, but did not bring results commensurate with the effort; and this is not for a moment to deny the shift in perspective which the theory of evolution has brought about. In short, the significant impact of evolution was along the line of objective naturalism rather than that of subjective naturalism. It removed the organism from its former isolation from the rest of nature; gave it attachments and conditions. Cartesian dualism was soon seen to be no longer possible. Man is a bit of this earth; at once a product and a denizen of nature.

We have pointed out that the nineteenth century was not philosophically creative. Those who championed evolution and sought to defend it against its enemies were compelled to throw the new idea into the setting of skeptical empiricism, hedonism, and positivism. Thus, Huxley invites us to believe that idealism is at least as well founded as materialism. He writes: "My fundamental axiom of speculative philosophy is that materialism and spiritualism are opposite poles of the same absurdity—the absurdity of imagining that we know anything about either spirit or matter." Spencer carries on the traditional hedonistic ethics of English thought and adds thereto an agnostic religiosity which is one of the curiosities

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of philosophy. Others, like Lewes, worked within the bounds of positivism, suspicious of anything metempirical. But these men and others like them, such as Clifford and Tyndall, were courageous and faced the issue as they saw it. To them and their contemporaries evolution and naturalism appeared an epoch-making discovery fitted to overthrow all preconceived ideas of human life. And when we remember the stagnant, traditionalistic society in which they found themselves, their zeal need not surprise us. We in this country are beginning to realize the unlovely situation which results when the *odium theologicum* joins hands, as it always does, with ignorance and passion.

The situation which confronts the human mind today is dramatic to the highest degree. Science has gained an increasing momentum because it investigates the world from the vantage point of centuries of discovery and of improvement in technique. And this is as true of the biological and social sciences as of the basic chemical and physical sciences. The prestige which science has gained on both theoretical and practical counts renders it almost impregnable. But there can be no question that the recognized implications of science are naturalistic in the extreme. That the organism is in some sense a physicochemical system is almost an axiom of research. Note, in this connection, the discovery of the regulatory influence of the secretions of ductless glands. In biology the science of heredity or genetics bears witness to the naturalistic tenor of research. In psychology the behavioristic school with its belittling of consciousness is an example of the same trend. In education mental testing has its obvious implications, especially as linked up with genetics and biopsychology. But the dramatic character of the present does not depend upon science alone. The disruption of old political and social institutions forces home the sense of impending change in man's outlook upon himself and upon the world. The compresence of nations through modern means of communication

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has started a process of comparison more drastic than ever before because so ultimate and on so large a scale. For every nation its past threatens to vanish from memory in the tenseness of the present.

This situation is a challenge to philosophy. Can it meet it? Not unless it is drastic, creative, and systematic. Once more the current is setting toward naturalism, but a naturalism with a broader and more thoroughly tested foundation. Once more, then, naturalism is emerging.

But we must not ignore the analytic side of our question though here issues are raised which can only be indicated. What is the exact meaning of naturalism? And what is the meaning of its contrast term supernaturalism?

Even our brief sketch of the appearance of naturalism shows plainly that at first we can strictly speak of neither naturalism nor supernaturalism. Man did not at first know what nature was. Dream-world and perceptual-world interpenetrated. The social group consisted of both the quick and the dead, gods and men. It was out of this undifferentiated, unanalyzed world of animism and hylozoism that nature and the supernatural gradually evolved in the thought of man.

As nature crystallized out, supernaturalism became sharper and more dramatic. For instance, not until the notion of natural law arose did the idea of miracle secure its challenging mystery. We may say, then, that the growth of the concept of nature forced a corresponding development of the idea of the supernatural. The second must adjust itself to the first at its peril. The sanctions and criteria of the supernatural become more difficult to find. It is nature which is explored and which becomes increasingly definite. The supernatural retreats to become the vague background of appeal. It eludes the technique of science and makes appeal to mystery and revelation. The more science penetrates into nature and relates man to it in all his activities the more the supernatural loses its contacts and significance and the more the feeling

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arises that there is not any realm of existence left over as beyond the natural.

Thus, of the two ways in which adjustment is made between the natural and the supernatural one of these, dualism, tends to disappear. The other, mysticism and pantheism, is subtler and harder to deal with. Mysticism as a feeling is simply a psychological fact; as a doctrine, it must appeal to logic and accept its criteria or else be frankly irrational. That mysticism as a compensatory rebellion against naturalism will long remain I have not the least doubt. Adjustments are slowly made and even never made in these matters of the emotions and feelings. When not purely mystical, pantheism seems to me to express a fundamental agnosticism. The world is physical, and yet is not physical but divine. Something of the dialectic of the distinction between degrees of reality is implied. Back of the apparently real is the more real, whose revelation it is. How can this be met except by denial that it is needless and answers no purpose because it changes nothing, neither life and death nor good and evil? And such a retreat to the supposedly more real, since it is logically unmotived, is arbitrary and can be continued indefinitely.

It would seem, then, that naturalism is becoming the positive and reductive term for thought. But naturalism must be filled out by the inclusion of human life and thus rise to humanism. It has been the supposedly negative and forbidding atmosphere of naturalism which has, perhaps, rendered many people desperate adherents of supernaturalism. They have felt themselves hanging over an abyss of mechanical processes which had no relationship to value. And this was philosophy's fault which it is only now beginning to correct. Surely the world is beautiful as well as ugly, satisfying as well as adverse. We can find means to accomplish what we greatly desire; and this control and direction of events depends largely on man's intelligence. Nature does not merely tolerate man for it has produced him; and it has come to this pass that nature's

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child can within limits direct the energies around him to channels leading to the accomplishment of his ends. More than any other generation this one knows in its heart that man must blame himself if war and ruin have brought despair into many lives.

The new naturalism must contain within itself the new humanism. It must be humanism which comprehends in the concrete that man's aims and satisfaction are not alien to his environment, but grow from it and secure their meaning from their setting. Such a humanism will be virile and intelligent because freed from phantom ideals. Not until such a humanism is full-born will naturalism be able to compete with the subtler forms of supernaturalism which people the vast beyond, which eludes our senses with beckoning hands and chants of angels.

> Then shall the horrid pall
> Be lifted, and a spirit nigh divine,
> "Live in thy offspring as I live in mine,"
> Will hear her call.
>
> Whence looks he on a land
> Whereon his labor is a carven page;
> And forth from heritage to heritage
> Nought writ on sand.

But I do not desire to end in a note of triumph. May not our civilization, also, have its failure of nerve? May not conditions become once more unfavorable to what is free and creative and lordly in man? There is no guaranty, no assurance. We cannot know the future. But there is as yet no reason to despair. The instruments of achievement are in man's hands as never before. Let him use them. Let there be daring and sincerity.

ROY WOOD SELLARS

ANN ARBOR, MICHIGAN

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LABOR AND THE LEAGUE

C. DELISLE BURNS

A review of any part of the work of the League of Nations must be a balancing of accounts. Something has been gained and something lost since 1918. The high hopes which guided many, at least in Europe, at the close of the war have never been realized, and no one now thinks of "reconstruction." Even the plans which were actually completed when the Peace Treaty was signed have lost their practical value; for the "slump" in the money value of shipping tonnage is as nothing if compared with the "slump" in moral ideals. The world of 1924 is suffering from a moral depression. The economists frequently write of the depression of trade in some parts of the world, but they do not generally refer to the moral collapse which is one of its causes, because the extent of that collapse is not calculable statistically. And perhaps the moral depression of value is most remarkable in countries whose economic wealth has not decreased. The inevitable result in merely economic terms may not show itself for many years after lassitude and cynicism have set upon a people; but the world is united by moral bonds which are as important as the bonds of economic intercourse. Depression and doubt are much more dormant today than confidence and hope were in 1918, and every country is suffering, or will soon suffer, from the collapse of ideals.

The work of the League in connection with labor has suffered from the general depression. The very ambiguity of the meaning of the word "labor" has perhaps helped to restrict this activity of the League, for labor may mean a political outlook organized more or less effectually by political groups, and it may also mean a certain group of functions in the organization of industry. It should be hardly necessary to say that the League has no special connection with labor as a political force, any

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more than it has a connection with conservatism or republicanism; but the prevailing ignorance is so great that opponents of the labor office of the League have to be reminded that if the League gives special consideration to labor, this does not imply any political connections.

Labor as a group of functions in industry was declared in the Peace Treaties to be one of the sources of social unrest. The performance of manual work is, in fact, connected with poverty, unemployment, and the danger of disease, just as the performance of manual work two thousand years ago was connected with slavery. It is assumed by many that the manual worker in industry need not be in danger of poverty, unemployment, or disease; that is to say, it is assumed that the performance of his social function can be secured without these evils. This assumption is by no means proved. The present organization of industry may be such that we should not obtain any books to read unless poverty, unemployment, and diseases compelled the wage-earners to work. But no one likes to face that possibility. Our economists are less honest than Aristotle; for he frankly examined a similar problem and concluded that, in the then existing organization of industry, slavery was inevitable. The economists, who are generally without any competence in moral pholosophy, either blandly assume that the evils of the existing system are inevitable or that their removal would leave the system eventually unchanged. Such assumptions, however, are not clearly conceived by politicians and statesmen, and therefore we may omit further discussion of them here. It is sufficient to note that the sections of the treaties which created the labor organization of the League assume that the evils suffered by the workmen in industry are remediable, for the preamble to these sections treats the removal of such evils as one of the steps toward social harmony.

The League, then, by means of a special organization, was to improve the conditions of employment in industry through-

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out the world. The labor organization of the League has been so often described that its chief features must be already familiar to the reader of this *Journal*. No changes have been made in the form of the General Conference, the governing body to the Secretariat; their relation to the other organizations of the League still remains what it was when the League came into evidence in January, 1920. Experience, indeed, has confirmed the utility of the representation of "interests" or industrial functions as contrasted with states or governments; for the representatives of the employers and of the workers in the Conference and in the governing body have kept the League organization in touch with industrial as contrasted with political issues. But in regard to industrial issues we must realize what the Treaties produced. They did *not* contain any reform of industrial practice, there was no attempt at solving the problems of unemployment, emigration, or industrial disease. All that was done was to establish a machine for dealing with such issues; and the machine—such as it is—has survived. Obviously the way in which such a machine may be used is a further question, and it may happen that the machine is not used at all; but, so far, it still exists. At worst, then, the situation in which we find ourselves is better than what it was before the war; and the general depression at the failure of "reconstruction" should not be allowed to disguise the fact that a very remarkable advance has been made.

The advance made may be estimated as we should estimate the value of administrative or legislative provisions for dealing with any social problems. So long as each problem has to be dealt with by special *ad hoc* efforts, so long will progress be slow; any difficulties surmounted in one case will have to be faced again when we are solving a new problem. Before the war the international agreements for the reform of industrial practices, for example in the making of matches from white phosphorus, were promoted by private groups of benevolent persons who had to persuade the government to act. The

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process was very slow. Now, however, the League promises a machine for all such action; there are provisions for periodical discussion, for constant pressure on governments, and for full information as to the practices in different countries. As soon as there is any general desire for improvement the machine can be used; and even if no such desire exists at present, it is worth while to keep the machine running. The position is not eventually different from that of war offices in states which are at peace; for the expense of their upkeep is regarded as necessary because the time may come when such administrative machinery is essential. It should not be regarded as cynical to suppose that the peoples of the world may eventually become civilized enough to organize peace as well as they now organize war. Until that time comes, the labor organization of the League will not be fully used, but meantime it exists and performs some useful services.

Not the least of these services is the publishing of information by the International Secretariat at Geneva, and if by any chance the activities of the Secretariat were curtailed, the future organization of peace would be postponed indefinitely. What most politicians and practical industrialists lack is not good will but knowledge of facts, for even those who are students of industrial conditions in their own country are often negligent of the situation abroad which intimately affects their countrymen. The labor office at Geneva supplies just that sort of general view which is essential for understanding modern industry. The monthly *Labor Review*, with elaborate articles, and the shorter *Official Bulletin*, as well as the valuable special studies, are all instances of the practical working of the international mind. No government, however powerful, could possibly supply the sort of information which the labor office at Geneva provides. There are, of course, limitations to any "official" information. It tends to be colorless, and, if the credit of a government is concerned, misleading; but an educated man ought to be able to read between the lines of an official publica-

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tion. One should not need pictures in order to realize that suffering occurs. Again, in some of its features official information on industry shares the defects of the dominant conception of industrial organization. The methods of statistics and mathematical reasoning have so obsessed economists that the most important facts in regard to industry are thought to be numerical.

Social philosophy has been confined within the limits of what is calculable under the influence of the physical sciences, and differences of quality or intensity of experience tend to be disregarded. Thus economics has ousted ethics. But we can hardly blame the officials of the International Labour Office for not being ahead of their time in such matters as this. The French, German, and British official information on industrial issues suffers from the same limitations.

Apart from the continuous work of the Secretariat, the labor organization of the League has achieved some remarkable success, which must be placed to its credit in spite of failure and disappointment in other spheres. In the first place, Germany and Austria have formed part of the labor organization of the League since October 30, 1919, and a representative of the German government as well as a representative of the German workers took part as members of the governing body at its first meeting in Paris in January, 1920. The formal admission of Germany was the source of embittered controversy at the meeting of the General Conference at Genoa in June, 1920, largely because the Conference was to deal with seafarers, and Mr. Havelock Wilson maintained his warlike attitude. The director of the labor office, Mr. Albert Thomas, was able, however, to arrange a form of words which permitted the Conference to continue its work with the co-operation of the German delegates. In this matter, then, the League has been able to advance out of the atmosphere of the war mentality which still dominates the Council and the Assembly. It would have been, indeed, utterly absurd to include in an international

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labor organization such countries as Bolivia, and to exclude Germany. The United States has so far refused to co-operate in the international effort to improve the conditions of workers in industry, and this has been a serious limitation to the utility of the League's organization. But it has been possible, nevertheless, to make advances by co-operation among those nations which have developed at least the beginnings of an international mind. The absence of representatives from Russia, although regrettable, is less important, as industry there is still hardly developed and has not yet become an integral part of the world-system. The other chief countries of the world have sent representatives of their governments, of their workers, and of their employers to consider and make proposals for the reform of industrial evils. The general proposals of the labor organization have been defined in the four general conferences held in Washington (October, 1919), Genoa (June, 1920), and Geneva (1921, 1922). A fifth conference was held at Geneva in October, 1923. Various conventions and recommendations for the reform of industrial conditions have been agreed to by the Conference. The details of these can be easily learned by reference to the publications of the labor office or by application to the agents of the office in any of the chief capitals of the world. It will be enough, therefore, to indicate here in very general terms the kind of reform which has been attempted. From its foundation the labor organization has attempted to secure and extend the leisure of workers in industry. This has been largely in connection with the "eight hours' day." In some countries (for example, in Great Britain) the well-organized trades had already established by agreement the shorter working day, but, in others, legislation was necessary to secure it. The particular period of work "eight hours' day" or "forty-eight hours' week," with which specific controversies are concerned, should not be allowed to obscure the general aim of the labor organization of the League, which is to prevent the workers in industry from hav-

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ing every particle of their life wrung from them in their labor. Owing to the convention agreed to at Washington in 1919, many states have introduced legislation giving the workers more leisure, and it may be seen how valuable the workers think this advance from the fact that in the recent reconstruction of the German Government (October, 1923) the eight hours' day was treated by the Social Democrats as the essential condition of their co-operation. In Germany the shorter working day was one of the chief gains which the worker derived from the revolution of November, 1918, and the labor organization of the League has striven to make such gains universal. There have also been conventions extending the protection of workers against industrial disease, and others aimed at preventing the exploitation of children in industry. Many states have embodied the conventions on these matters in legislation, and in Japan and India, where the conditions are very different from those in Europe and America, advances have been made which would never have been realized but for the labor organization of the League. The existence of the organization has made it easier for the new states created by the Peace Treaties to adopt a high standard in their industrial laws; and in old states the tendency toward progress for the first few years after the war was supported by international criticism, expressed at the meetings of the General Conference.

A report published by the labor office at Geneva on February 11, 1921 (*Studies and Reports, No. 15*, Series A), reviewed the tendencies of European labor legislation since the war. At that time the great reaction had not made itself felt. The report spoke hopefully of steps toward "control by the workers" and the regulation of wages in low-paid occupations, but even then there was a fear of "political convulsions." Now, in 1923, we are in full reaction. Attacks have been made in Great Britain and elsewhere upon the labor office of the League, some governments have refused to confirm the conventions by legislation, and—worse still—the high-sounding

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principles of the progressive legislation of 1920 have proved in many countries to have no practical effects. The labor organization suffers from the same weakness as the Council of the League. The governments of the world have not, on the whole, taken it seriously, and the people of most countries are so perplexed by domestic problems that they have not been able to compel the governments to act internationally. Some of the more powerful governments have pursued and are pursuing a war policy in spite of the signing of treaties of peace, and in such an atmosphere the organization of peace cannot be achieved. But is it not the League of Nations which has failed; the failure is a failure of governments and peoples, who have not been able to rise to the occasion, nor even to use the instruments which they themselves have made. There may be fools who think that if an instrument is produced it will do all the work without a hand to guide it; at any rate there are some who write letters to the newspapers protesting that the League or the labor office does not establish the millennium. It is, indeed, difficult to be patient with such political innocence, but its existence shows how far we are from any general understanding of the facts. Even the "advanced" political groups seem to believe that reforms are accomplished when an agreement is signed or a law promulgated; and in the new states of the world it appears to be imagined that if a law is passed to forbid stealing, stealing will cease to exist.

Unfortunately, during the war "practical" politicians learned the use of noble moral professions in maintaining their own power. Covenants and conventions may have some "propaganda" value when it is necessary to show that we are making progress, but real problems cannot be solved by fine words. The League and its labor office have now to reduce to tangible and definite results the principles on which they were originally based; and a few determined men may yet be able to hold the governments and peoples of the world to at least a few of their noble sentiments. It is still very commonly

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believed that peace is better than war, although every nation is spending ten times as much in preparing for war as it is spending on the League and other instruments of peace; and, indeed, if international politics continue upon their present course, another great war is inevitable. It is also still sometimes thought that the evils of the industrial system can be removed, but progress in industrial legislation has ceased and in some countries post-war reforms have actually been abolished. In such an atmosphere the activities of the labor organization of the League are necessarily curtailed. The practical issues, however, are receiving fuller consideration. Events of the past few years have shown that there are two chief difficulties which must be overcome as a preliminary to international action for the reform of industrial conditions; one is the failure of governments to ratify conventions, the other is the ineffectiveness of legislation which is without administrative provision for its enforcement. These two difficulties, therefore, are to be specially considered in view of information which is being collected by the labor office. The actual items of the agenda for the conference are on the old lines; they are: (1) the utilization of worker's leisure; (2) foreign worker's compensation for accidents; (3) weekly tests in glass-manufacturing; and (4) night work in bakeries. It will be seen that the program is less ambitious than it was in former years. But, on the other hand, there are very significant suggestions as to methods for the amending of conventions by governments which do not ratify them as agreed. A report on the subject has been published by the labor office. Behind all questions as to the ratification of conventions lies the old problem of sovereignty. How far has the meaning of sovereignty changed since the foundation of the League and its labor organization? In practice, hardly at all; but the general tendency is toward consideration by each sovereign authority of the action taken by other such authorities. The conventions of the labor organization can never be, in the

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fullest sense of the word, legislation, and international labor legislation therefore must remain a metaphorical expression. But the legislation of each sovereign state may be defined more closely than hitherto by international agreements. There is additional difficulty because the structure of government differs in different states; for example it is unthinkable that the British Parliament should delegate to the Cabinet the power to legislate on the lines of an international convention. But these suggestions indicate the practical problems which have to be faced in reforming industrial practice in any large groups of states taken as a whole. The other chief difficulty which the labor organization has to face is the administration of labor laws. Everyone knows that the first factory acts in Great Britain remained ineffectual until an inspectorate was established in 1833. The problem of inspection is therefore fundamental, and this is to be the subject of special consideration at the General Conference. Methods of inspection differ. The effectiveness of different methods has been tested, and the weakness of corruption of inspectors is known to have rendered the most admirable laws quite futile. Of course, the Conference has to discuss the principles upon which inspection of factories and other work-places should be based; but "between the lines" one may read the truth that labor legislation has in many countries proved to be useless, because there is no inspectorate or because inspectors can be bribed.

A good system for the administration of labor laws would reduce the opportunities for bribery and other forms of corruption and increase the effectiveness of punishment for the infringement of laws. The first necessity is that inspectors should give publicity to what is actually occurring in industry, for it was proved fifty years ago in Great Britain that factory reforms were made possible by the reports of the factory inspectors. It is, of course, too much to hope that the League itself should send inspectors to inform the world about the conditions in cotton mills and match factories in China. At

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any rate it would be justly resented by the Chinese if the League reported upon industrial evils in China without at the same time noticing the conditions in certain British-owned industries in Spain. But inspection must remain for many years one of the functions of the separate states of the world, and all that the League can do is to assist in making such inspection effectual. It is a real step forward that the conference of the labor organization should turn aside from projects of legislation to consider methods of administration. The purpose is the same—the organization of the peaceful occupations of men so that there may be less confusion and less suffering borne by those who perform essential functions in the service of civilization. If an attempt were made to express cogently the task of the labor office of the League, language might become embittered. It was the so-called "labor unrest" at the end of the war which induced politicians to support the creation of an international labor office. Mr. Lloyd George certainly desired reform in so far as it would keep the victims quiet. But what is this labor unrest? In industry we blind men with smoke; we deafen them with the noise of machinery; we torture their minds with the fear of unemployment and its result—semi-starvation; we house them vilely, and make their children go short of food and clothing lest they should lose "the will to work"; and when the victims show any dying sign of vitality we call it "unrest." It is indeed immaterial that, with such an experience, they should not have understood the law of supply and demand, for every textbook will show them that they get what their labor is worth. This is easily deducible from the proposition that their labor is worth what they get, although a new Rabelais might carry somewhat farther the argument of their new scholasticism. The labor organization of the League, however, was designed to diminish the human "costs" and "risks" borne by the workers in industry, and representatives of such workers have been given a place in the conference and governing body of the organization.

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Unfortunately the weakness of their section of the League as an instrument of reform is due not merely to the inertia of government but to incompetence and divisions among the workers' representatives. It is possible that some of these have not taken the matter seriously, and a few may perhaps have regarded attendance at a conference in Switzerland as a form of winter sport. The employers, who are supposed to be the organizers of industry, are too timid or perhaps too conscious of their own incompetence to accept any changes of the system which might make greater demands upon their intelligence. Again, like the rest of the League, the labor section suffers from the war policy of European nations and the "sacred egoism" of the United States. But, in spite of the general moral depression, progress is being made. We cannot expect the thing to make much headway with a rising sea in Europe and nothing but good advice from America; it is, however, possible that the League and its labor office may survive until some future day, when the peoples and their governments determine to carry forward the organization of peace.

C. DELISLE BURNS

LONDON, ENGLAND

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THE LEAGUE OF NATIONS: A PROCESS[1]

A DIALOGUE BETWEEN STUDENT AND PROFESSOR

ADOLFO POSADA

STUDENT: Sir, I hand you back the copy of the *International Journal of Ethics* for January, 1924. Its articles form an admirable approach to the study and comprehension of the League of Nations. It is like a draught from a cool and limpid spring.

But the young generation—your own hearers—do not readily yield to optimism on this subject. We are obliged to admit that, in these days, in Europe, the times seem ill-suited to any enthusiasm. If you ask us to esteem the work of the League, and its response to our hopes, I will say that it is indeed a beacon light, but a beacon shrouded in fog; our faith in it, I must admit, sir, is irremediably disappointed.

Furthermore, *any* league of nations, now, looks to us like a mere external, superficial thing; for it would have no roots—no depth in the conscience of nations. There is a suggestive phrase in the very first lines of Mr. Roth Williams' article in the *Journal* ("The technique of the League is the art of organizing conferences") that is not very encouraging; a mere art of organizing conferences!

PROFESSOR: Ah, my young friend, even so; even the "mere art" of organizing conferences would be no small achievement! It is by just such conferences that we can hope to move men,

[1] This article originally appeared in the author's *Actitud Etica ante la Guerra y la Paz*, a collection of essays published in 1923. But upon reading the *International Journal of Ethics* for January, 1924, the author entirely re-wrote the essay in the light of the articles there published and now presents it to the *Journal*.

The author is a professor in the University of Madrid, and his various works (all in Spanish) in the fields of sociology, political science, ethics, and education make him a leader in the modern thought of Spain.

The translation is made by Professor John H. Wigmore, dean of the Northwestern University Law School.

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to stimulate the emotions of whole peoples, to reconcile conflicting aspirations, and to control mighty forces like those of the current nationalistic jealousies.

But let me address myself particularly to that state of mind of the younger generation to which you alluded. I, my friend, am an old man now, and therefore able to contemplate the situation more calmly. And I dare to say to you that *you must concentrate your whole will on having faith* in the League of Nations!

It is not perfect, of course. But it is gradually overcoming its birth-crisis, and it has now to overcome the even graver crises of growth; or else we must recur inevitably to barbarism. If we let it perish now, when it has scarcely begun to live (for its aim is to organize Peace, and to minimize the possibility of war), we are in effect letting our civilization fall back into chaos, from which may God preserve us!

If we mean to think constructively, we must for the moment abandon this critical attitude (time enough afterward for that!), and visualize the deep general significance of the League.

First and foremost, it is a *symbol*—a symbol of progress. It is a living and warning reminder (like a remorseful pang of conscience) of that account which the Allies in the Great War aimed to settle with "the nation that apotheosized the rule of force" (to use Mr. Wigmore's phrase in the *Journal*), and of the principle affirmed by President Wilson in 1917, "to vindicate the rule of Reason against the rule of Force." The League is the lofty consecration of the triumph of those motives which made millions of us neutrals sympathize with the Allies. And so, as expressed in the article above quoted, "The true function of the League, as the specific product of the War against War, is to symbolize the rule of Reason" in the extra-juridical sphere of political struggle. It symbolizes the most constructive force that humanity has ever contrived for overthrowing that domination of violence which has hitherto been the criterion of decision among nations.

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STUDENT: Indeed, sir, a noble idea—if only it were a reality! But, if you will pardon my incredulity, we of the younger generation (odd though it may be) are a little skeptical, or at least extremely cautious. A symbol, you call it. But sometimes a symbol is merely a mask to disguise tendencies which cannot be openly avowed! In this case, it looks to us as though beneath this "symbol" may well be concealed merely some dangerous political devices. What if the League be merely a cloak, made of innocent lambskin, covering the nationalistic ferocities and imperialistic ambitions, suppressed, but alive or latent? Will not the League be (from time to time, at least) merely a piece of machinery (admirable, no doubt!) available to give collective effect, under the guise of free deliberation, to the domineering will of the Great Powers? Have you not noticed how difficult it has been to control the action of any nation which deemed itself powerful enough to disregard the ties of law? Do you not recall the attitude of Italy in its affair with Greece—an attitude that could hardly be described as quixotic? And may one not entertain a certain distrust of the League if the fact be that it is dominated by this or that combination of governments or states (I will not venture to say "nations")?

PROFESSOR: Oh, ye of little faith! Skeptics! I can see that your cool analysis is generating such distrust that you are in great danger of drying up the living sap of your ideal! Suppose that there *are* some who would use the symbol as a disguise: well, my friend, then we shall pierce their disguise! The very strength of the symbol is that it represents so profound an eagerness of suffering humanity, so strong a moral impulse against the horrors of war, that these casual political intrigues, macchiavellian though they be, can never avail to defeat the ultimate purpose of this enterprise. Every day of the year brings it stronger support. Even in America, which did not join the League, they are now watching and following with interest its progress. If the Wilson idea could survive the

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catastrophic crisis which ensued on the abstention of the United States, we may well hope that it can weather even severer storms.

But there is another function for the League, and a function every day more operative. Amidst the chaotic confusion of ideas and of ideals, now reigning especially in Europe, as a consequence of the war, the attitude of each individual or collective mind toward the League is the most accurate standard for measuring the spiritual tendencies. It is indeed decisive.

STUDENT: Sir, I cannot say that I follow your meaning.

PROFESSOR: I will explain. According as we look upon the League with sympathy, with apathy, or with antipathy, we reveal three distinct political temperaments.

Sympathy to the League implies an enthusiastic soul, liberal with humanitarian and generous sentiments—a soul that has faith in the expansive force of the "Declaration of Rights of the Man and the Citizen."

Apathy to the League denotes a cold soul, devoid of faith in the gradual progress of those ideas characteristic of representative and democratic institutions.

Antipathy to the League is found in a reactionary soul, of nationalist or imperialist aggressiveness, placing its faith and its hope in force.

For the League implies fundamentally two things: first, that the nations (great or small, strong or weak) stand for the recognition and defense of their individual existence; secondly, that they profess a liberal government—a government of law, of legal guaranties of all just interests, especially those of the weak; for the liberalism signifies all this, and especially generosity. And I include, under "the weak," not only whole nations but those ethnic or other minorities which exist in many states. And if the spirit of law, or, better, of justice (which is another thing than the mere legalism of the lawyer), takes hold of the soul of the League, then this protective influence, passing out into the very being of the several nations, will inspire in them a deeper respect for these human rights.

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The mere force of public opinion (the *mores*, as the term is used in the *Journal* cited) will so operate, without irritating or offending, that national self-respect alone will make it "bad form" for any nation in the League to fail notoriously to maintain the essentials of a well-ordered state.

STUDENT: But, sir, you just used the expression, "the soul of the League." Do you then really believe that there is a "soul" at those meetings in Geneva?

PROFESSOR: My dear fellow, that was indeed a slip on my part. Soul? Did I say "soul"? That is too large a word. I cannot attribute a soul to the League, either at Geneva or elsewhere. For the League, as yet, does not possess even the body for a soul. It has not yet formed an organic synthesis; and without organic synthesis no soul is possible. The League, in spite of its elaborate mechanism, is not an organism.

Nevertheless, it is a *process*—a process in its initial stage. But in so far as it forecasts a future, a Utopia, in so far as it emphasizes in its action the fundamental idea of a corporate unity (as visioned by President Wilson), it will end by becoming an instrumentality capable of triumphantly bringing to pass what we may call *super-liberalism;* that is, the sublimated ideal of pure liberalism, which, before the war, had not passed beyond the national frontiers of the most advanced states.

In my opinion, the League of Nations either means nothing or it means, as an objective, the maximum of incarnate liberalism, both extensively and intensively, in diverse forms, in the constitutional system. I recall a formula of the great von Ihering, defining his own attitude toward the Roman Law, "through the Roman law, but over and beyond it" (*Geist des römischen Rechts*, 4th ed., I, 14). And so we may say that the League must pass "through Liberalism but above and beyond Liberalism."

And that the process is an advance in the internationalization of states may be seen in the three features emphasized in

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the article by Mr. Wigmore cited above in the *Journal;* viz., the features of "political organization," of "the *mores,*" or public opinion, and of "international procedure." But this advance must continue to the point of creating that personality which is now lacking. Whether this personality will constitute a superstate or not will depend upon circumstances not yet foreseeable. But, for the present, the essential is that it form an *international mind.* This, as yet, is scarcely existent, and cannot show any strength of life so long as we fail to recognize (in Mr. Norman Angell's words in his *Illusions of Victory*) "the bankruptcy of the ancient tradition" inspired by the greed for power and mastery.

And now, my dear fellow, to conclude: The League of Nations, or rather this *process,* is penetrating to the heart of two great problems, one ethical, the other political.

The *ethical* problem lies in the necessity for a radical change of moral attitude in the mind of nations. In the words of our lamented master, Francesco Giner, "Neither individuals nor nations will ever find their ideal in an extension of territorial power or size or supremacy," but rather "in a life constantly more pure, spiritual, and lofty, fostered by means of existence not obtained through force or shrewdness from others."

The *political* problem is, in the meetings of the League, to make the voice heard, more and more, of the nations themselves through the words of their most representative men; in other words, that every day shall be heard more and more the *men,* and less and less the *diplomats.*

ADOLFO POSADA

UNIVERSITY OF MADRID

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SECURITY IN MODERN LIFE

R. F. SWIFT

Security is a fundamental demand of human life. Customs, government, and religion have this as their primary purpose. The problems of the relation of the individual to the community are largely based upon this need in the individual. On the surface it may seem that the need has been the security of the community. Although it is perhaps impossible to make an absolute distinction between the individual and society, in the last analysis the individual is the center, and everything exists for him. The group, when it is used as the central concept, is an abstraction. The individual is the concrete actual, the living person. When he sacrifices himself for the community, he is sacrificing for other concrete persons, not for an abstract entity. What is the community when all living persons are thought away?

There has been, always, an unstable equilibrium between the individual and the community. The tension has been greatest where the higher interests of the individual are in jeopardy. The individual has set himself against the community, normally, in order to gain or to preserve what seemed to him higher or greater goods. Spiritual values such as freedom have been the most zealously guarded.

An age of individualism is an age of insecurity. For individualism means the giving up, or at least the risk of losing, one form of security for a possible other. In the modern age of individualism the chief object of achievement has been economic security. Its social philosophy is economic individualism. It involves the danger of losing certain values or interests which otherwise might be sources of security. Theoretically economic individualism is not incompatible with spiritual individualism, but in practice it tends to become so. For all

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values are achieved and held by effort, and when effort is directed almost exclusively in one direction, values in other fields are endangered.

Any human interest asserted in an exclusive form endangers other interests. In times of political struggle such as the Civil War certain values have been the immediate concern, in this case certain human values of a political nature. Economic values were secondary. In religious wars both economic and political values may be sacrificed. We now realize how the economic life of Europe was endangered by the Great War and how the peace settlements have endangered other values because of the exaggerated importance placed upon economic values.

Man is perhaps incurably individualistic. But if he is so, it is only in one or at most a few directions at a time. He will follow a dominant impulse or ideal to the sacrifice of others and learn, if he learn at all, by trial and error only. He wants to validate all impulses in experience as they appear in the foreground of consciousness, rather than by an exercise of reason attempt an inner organization of tendencies or impulses.

The present age attempts to validate the tendencies of man's nature toward economic individualism without having thought the matter through in advance. Experience is proving an expensive teacher. For not only has modern life not achieved economic security but it has seriously endangered other interests of a high order. Nor are we even assured that the economic order will survive the test of the last world-catastrophe, a catastrophe which economic individualism itself did so much to bring about. The individual in this age is neither secure nor happy, nor does he have peace. This may involve the greatest opportunity which the race has had, certainly it involves its greatest responsibility.

The failure to secure the individual is a community failure. For this is the chief function of communities. It has been thought that by giving free reign to man's economic propensities his security would be achieved. It is not so. Society has

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not had the same regard or the same interest with respect to spiritual individualism. It is communistic with respect to the higher values and interests. But the individual should be able to feel that the community will assure him security in the possession of spiritual values as well as material goods. The sources of his life, spiritual as well as material, are in the community life. In practice it often happens that the community is hostile to the development of the higher ranges of the individual's nature. It often compels him to look elsewhere for support and security, and this often means a break with his true spiritual home. Or he must conform and sacrifice his spiritual interests.

Modern communities, in fact, are organized too exclusively on an economic basis to allow for much consideration of man's spiritual welfare. Society must have material organization, but it should not be necessary that this exclude the achievement and the practice of the higher values, or that it require the sacrifice of the finer, more spiritual impulses in order that the individual may live. The individual finds such support in the family and to a lesser extent in other groups. The family, too, is an economic organization, but it somehow finds it possible to subordinate the economic to the spiritual. This should be the case in the great community if man is to find full security for the highest interests.

The failure of the great community in this respect is shown by the various devices which are being tried in order to achieve security. In most of these perhaps the economic motive is uppermost. Other factors, however, while under the surface, exercise strong influence—fears, not simply of physical want but of loss of position, status, fellowship, and their consequences, particularly to one's family.

A commonplace device is membership in a more limited association. This has been the chief source of security, and in an age of individualism the presence of a strong tendency in this direction is evidence of the limitations of such individualism

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from the social standpoint. The traditions and the ideals of economic independence make almost necessary the subordination of other values to this one. But it is obvious that security gained in this way, while very satisfactory for those who actually acquire economic independence, is not adequate for the needs of masses of people. The individual therefore faced with circumstances which he cannot control, and unable to use his own powers to win a secure place, resorts to various devices to supplement his individual powers. The labor union is in part, at least, such a device. It is meant to give the individual security—of work, of wages, and of tenure—which he cannot secure alone. Unions and associations of various types are formed for the purpose of securing the interests of a special class. In place of the community as a whole being the support of the individual there is a tendency to the formation of smaller communities within the great community. These represent special interests and often oppose each other and the general good. The mother-community therefore tends to disintegrate and the ultimate source of security to disappear. There seems to be at present a tendency for individuals to look largely to special groups for security and protection—for the very sources and ends of their life often—rather than to the larger whole. A single loyalty tends to give place to a plurality of loyalties, merely. The single authoritative sanction disappears. Those who seek the solution of the problem of modern statehood in a plurality of sovereignty seem to have given up the problem of the relation of the individual to the community as a whole.

The growth of class consciousness which is rightly feared and deplored is due in large measure to the lack of security for the individual. The consciousness of the individual will be the consciousness of the group which is the source of his life and the protector of his interests. If individuals are dependent upon a group for their very existence, consciousness will be transformed accordingly.

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Another source of security in modern life is insurance. This is a device to buy security. It is one of the greatest of modern inventions. If it were possible for every individual to buy security it would be a great aid in the development of the values of individualism, supposing that men could meet the test of complete independence. But this device has very great limitations. Economically it places a very heavy burden upon society itself. It may be that society can be placed upon a financial basis in this respect and that all men may find a substitute for those personal sources of security which he has usually relied upon. This form of protection has thus far been gained by a small minority only. It is not possible now for all men to buy such protection. Insurance that is not paid for from the profits of a business is hard to carry. It is not, however, a mere business proposition. Much insurance is merely a modern way of escaping the fears due to an individualistic and economic society. It is a substitute for the spiritual support which a more personal form of society furnished. It is a phase of the problem of whether or not man can in fact become independent of his fellows and change the personal basis of association and intercourse to an impersonal one. Can man become his own keeper and thus escape an ancient and onerous obligation?

It is in connection with man's ideal interests that the problem of security is often most acute in modern life. He has perhaps greater physical and economic security than at most periods in history though in view of the conditions in Europe this may not be true. But does the modern individual *feel* secure? For after all it is a sense of security which is often most needed.

If man is to have peace and contentment, if his creative energies are to be released, that which he holds as most precious must somehow be secured. Man has always been the prey of fears. This is the emotional reaction of his dependence and

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insecurity. The chief value of community life is to remove these fears and to release the creative impulses of man. But only the community that is based upon community of spirit, of shared interests and values, in which the individuals are members one of another, is capable of giving this security. Such a community man has often projected in imagination, as, for example, Royce's Beloved Community, Paul's Invisible Church, and the Utopias. We may not hope to achieve any such idealizations at once. Nor is the solution in forms of insurance or in the usual type of association, for these are mostly for the purpose of economic security merely. The solution can come only through the progressive embodiment of the ideal community in more limited communities, the end of which is not the satisfaction of some special interest but the expansion of the ideal to include the whole.

One institution or community—it is perhaps more of an institution than a community in modern life—which ought to be the great instrument in this program is the church. Religion is an all-inclusive human interest and sentiment. It transcends all distinctions and all specially restricted fields of life. It stands for the final, the highest, interest of the individual. The church claims to be able to secure for him his most precious values and to make him the possessor of complete security. Not that it claims to give him economic security, but it does claim to give him a sense of security to secure those interests for which all else would be cheerfully sacrificed.

It is to be feared that the church is not bringing to men the degree of security and happiness and peace which it might, in the light of its history. It is not always that membership in the church means that one is in a community fellowship. The relations between individuals in the church—social, economic, and intellectual—are not always affected by such membership. He is among others, but not so often of them as should be the case in a genuine spiritual fellowship. The ideal demands of the individual are not secured by such association. He does not

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find the full support necessary if an impulse to sacrifice all for an ideal good is to be strengthened. Here as elsewhere he must learn caution. This is because the church takes its color from contemporary life rather than from the life of the Invisible Church. Nothing would so effectively give the modern individual a sense of security and the capacity for achievement of Christian values as to know that the church of which he is a member would at all costs seek those values. "Come toil on toil; 't is this that makes her grand; Peril on peril; and common states that stand in caution, twilight cities, dimly wise, ye know them for no light is in their eyes." It is only rarely that an individual is capable of standing with the support of an ideal community only. Common men need the firm support of their fellows in the flesh. The church ought to furnish both the human and the ideal community from which the individual might draw the sources of his life in its highest ranges. It ought to be, it has been in the past, and it may be in the future, the unfailing support of man's best impulses and aspirations. Man is capable of infinite sacrifice of his lesser interests and values if only the higher be safeguarded. The church by its history and by its claims should lead the way in this age of scattered loyalties and spiritual confusion and uncertainty.

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CURRENT RELIGIOUS THOUGHT AND MODERN JURISTIC MOVEMENTS

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Man's attempt to obtain aid from his environment in the struggle for existence at times takes the form of religious search, at other times it assumes the character of scientific inquiry. The range of religious investigation has narrowed through the progress of science, which today does much of the work of religion in previous times;[1] so also in the field of law. The legal order today has wrested from religion much of its territory, either in enabling human beings to live more harmoniously with one another or in securing to them a greater surplus of the economic wealth of the group. The advance of both science and law in these directions has been made possible largely because of the liberalization of the religious mind itself as it became more intelligent in defining or delimiting these various fields. The religious spirit is, then, most vitally interested in that phase of environment which is denominated legal, and, either by positive and constructive effort or negative and destructive inertia, attempts to influence it.

In attempting to show what is the influence, if any, of current theological thought upon leading developments in the law and its philosophy in the present, it must be borne in mind that from the very nature of the case mathematical certainty cannot be obtained. We live too close to the social mind of the present to obtain proper perspective; we are handicapped in our analyses by living in the midst of it. The utmost which can be safely predicated is that here in a given instance is to be found a dominant mode of religious thought, while

[1] Two excellent works illustrating this development are Fiske, *The Idea of God as Affected by Modern Knowledge*, and Hocking, *The Meaning of God in Human Experience*. Very suggestive also are Gwatkin, *The Knowledge of God and Its Historical Development*, and Youtz, *The Enlarging Conception of God*.

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at the same time in the law a similar juridical development; and, with the knowledge that man's life is inextricably interwoven with the social forces and thought-forms of his time, we may plausibly infer that the juridical movement is a result of the religious, or that both are manifestations of a fundamentally identical social mind.[1] At the same time, one must not minimize the influence of other factors—such as the economic, the philosophical, and the social—which may have shaped and crystallized legal rules and institutions.

THE SOCIAL MOVEMENT

A fundamental presupposition of the dominant religious mind is that the present social order not only must but can be Christianized.[2] The meaning of this is that the object of the church and religion is not only to save the human soul in a future world but to save the human being in the present, through social betterment. By means of minimum-wage legislation, workmen's compensation, shorter hours of employment, factory inspection, limiting the power of the creditor or injured party in securing satisfaction, prohibition of child labor, limitations on freedom of contract, and other modern ameliorative measures, the religious spirit is attempting to secure a social rather than a legal justice.[3]

[1] The outstanding elements of the modern religious mind may be analyzed as being the following: The scientific and historical; the social program; the divine immanence; the element of democracy; the elements of secularity and humanity; the movement toward church union; the missionary program; and the element of rationality. For suggestive discussion of these matters consult H. C. King, *The Moral and Religious Challenge of Our Times, Theology and the Social Consciousness,* and *Reconstruction in Theology;* G. A. Coe, *The Religion of a Mature Mind;* Youtz, *The Enlarging Conception of God;* and G. B. Smith, *Social Idealism and the Changing Theology.*

[2] The titles of the various books advocating this social gospel are very suggestive. Consult Rauschenbusch, *Christianizing the Social Order, Christianity and the Social Crisis,* and *A Theology for the Social Gospel;* G. B. Smith, *Social Idealism and the Changing Theology;* Dickinson, *The Christian Reconstruction of Modern Life;* Peabody, *Jesus Christ and the Social Question;* King, *Theology and the Social Consciousness;* and Shailer Mathews, *The Church and the Changing Order.*

[3] That the enumerations given are among the present elements in the law, which has been called "The Socialization of Law," consult Roscoe Pound, "The End of Law as

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It is a far cry from the viewpoint of primitive Christianity to the social Christian movement of the present; the contrast between the two aids in bringing out more forcibly the dominant current of the present. The early Christians as well as antecedent movements in Hebraism were completely dominated by messianic ideas of the speedy ending of this "present evil age" and the miraculous establishment of the kingdom of God.[1] The present social order was disregarded, and the concern of men was to inquire what God required of those who were soon to become citizens of an other-worldly kingdom, and not what ought to be done to make this world a better place in which to live.[2] And throughout the development of the early Catholic Church, before it was made the state religion under Constantine, there is to be found this apocalyptic movement combating the growing tendency to disregard it. With the exception of certain minor sects, during the Middle Ages messianism largely disappeared so far as the idea of imminence was concerned, but the viewpoint still was that the chief concern of man was to prepare for the next world, not to improve the present one. In the days of the religious revolution of

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Developed in Legal Rules and Doctrines," *Harvard Law Review*, XXVII, 195; and it is more than striking that it is Dean Pound's belief, as well as that of other sociological jurists, that the present age seeks a social rather than a legal justice. See his article "Social Justice and Legal Justice," *Central Law Journal*, LXXV, 455. See also Duguit, *Les transformations générales du droit prive depuis le code Napoleon* (translated in Vol. II, chap. iii, of Continental Legal History Series).

For the socialization of the law on the Continent, see *German Civil Code*, pp. 528–29, 829; Charmont, *Le droit et l'esprit democratique*, chap. ii; Stein, *Die sociale Frage im Lichte der philosophie*, 2 ed., pp. 457 ff.

For full bibliography with reference to the social movement in the law, consult Pound, *Outlines of Lectures on Jurispridence*, pp. 43–44.

[1] Innumerable passages in the New Testament show vividly this expectation of the early Christians. Consult I John 2:18; I Thess. 4:13–17; II Thess. 2–10; II Tim. 3:1–5; I Peter 4:7; I Cor. 15:50–58; Luke 21:28, etc. See also Shailer Mathews, *The Messianic Hope in the New Testament;* Case, *The Evolution of Early Christianity*, chap. i; and Troeltsch, *Die Soziallehren der christlichen Kirchen und Gruppen*, pp. 1–83.

[2] This notion that human effort could not be efficacious in improving the social order of an inherently evil world is to be found to some extent from the beginnings of history even to the present time. Consult Case, *The Millennial Hope*, chaps. i–v.

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the sixteenth century messianism and apocalypticism again flourished,[1] becoming once more checked through the religious controversies over doctrine and church polity and the growth of rationalism, combined with the emphasis which the religious leaders placed upon certain metaphysical doctrines, as divine sovereignty and election. Although in the nineteenth century religious pessimism again blazed forth in some quarters through the revival of messianic teachings,[2] the dominant tendency of the religious mind became represented by Arminianism, Pietism, Quakerism, and Methodism, in the emphasis which each of these placed upon a religious life and upon the worth of the individual man.[3] On the legal side it was an age of property and contract, of industrialism and commercial expansion, and it was not until the present time that the religious spirit succeeded in securing partial recognition by the law of the social interest in the individual moral and social life.[4]

With regard to social reform, then, the religious mind of the present believes fundamentally in the efficacy of effort, that the world can be made a better place in which to live. It recognizes that the inherited religious doctrines, formulated

[1] K. Kautsky, *Der Kommunismus im Mittelalter und im Zeitalter der Reformation;* Bax, *The Social Side of the Reformation in Germany;* and Rauschenbusch, *Christianity and the Social Crisis*, chap. ii.

[2] Reference is made to those messianic movements inspired by the teachings of the Irvingites and Darbyites and Joanna Southcott in England, and of the Millerites, Latter-Day Saints, and Russellites in America.

[3] The influence of the Christian Socialist party in England under Maurice and Kingsley is set forth by T. C. Hall, *The Social Meaning of Modern Religious Movements in England* (1907). For the literary prophets of the social ideal, reference may be made to V. C. Scudder, *Social Ideals in English Letters;* for a similar treatment in America, consult C. R. Henderson, *The Social Spirit in America.* A number of other works are suggestive, as Brandes, *Main Currents in Nineteenth Century Literature;* Francke, *A History of German Literature as Determined by Social Forces* (1907).

[4] It is interesting to compare the negation of juristic effort, as taught by the historical school of jurists, who were dominant in the nineteenth century, with the similar idea of religious pessimism to be found in messianism, which was quite strong in the same century. For the religious movement consult Case, *The Millennial Hope*, chap. iv; for the historical school, see Roscoe Pound, "Scope and Purpose of Sociological Jurisprudence," *Harvard Law Review*, XXIV, 591; XXV, 140, 489.

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in a past age, must be restated and reinterpreted in order to function for the needs of the present. The individual is not merely to be saved from a world regarded as hopeless, but the world itself is to be regenerated and Christianized by religious forces.[1]

BIBLICAL CRITICISM AND LAW

Involved in the conception that the present social order may be regenerated and Christianized by the conscious and purposive efforts of man, is the altered viewpoint with respect to the authority of the Bible or the literary sources of present-day religion. This new conception is strikingly illustrated in the support which the religious mind today gives to efforts of the state to enact laws dealing with health and prevention of disease, and to the problems arising out of the institutions of the family, particularly in marriage and divorce.[2]

The older theological conception of an authoritative, legalistic scripture, interpreted by an official ecclesiasticism, has been a bane to progress of thought in many spheres; the his-

[1] Sociological jurisprudence and social theology are in many respects fundamentally identical with regard to restating the inherited legal and religious doctrines and dogmas, in order that these shall function for the needs of the present. A leader of the social theological group, Shailer Mathews, and the most prominent exponent of sociological jurisprudence, Roscoe Pound, treat the past in law and theology in a strikingly similar manner, though each has worked independently of the other and in a different field. The former regards theological dogmas as the result of certain creative, social minds the Greek, Semitic, imperialistic, feudal, nationalistic, bourgeois, and social and democratic. See his article, "The Social Aspects of Theology," *Biblical World*, June, 1915; also "The Historical Study of Religion," in G. B. Smith, *A Guide to the Study of the Christian Religion*. Dean Pound likewise regards legal doctrines and institutions to have been formulated by different social groups in the past, which he terms "Primitive," "Strict," "Equity," "Maturity," and "Socialization" of law. See "The End of Law as Developed in Legal Rules and Doctrines," *Harvard Law Review*, XXVII, 195; also "End of Law as Developed in Juristic Thought," *ibid.*, XXVII, 605; XXX, 201.

[2] Some religious organizations and religious leaders, while admitting the Bible is no longer authoritative where the physical or biological sciences are involved, nevertheless refuse to adopt this position in dealing with sociological problems, as of marriage and divorce. But the dominant religious mind certainly does not draw this distinction. A. Houtin, *Histoire du modernisme Catholique*, chap. ii.

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tory of the freedom of thought is replete with examples of this unfortunate viewpoint.[1] The older theology descried efforts to control disease through the imposition of laws relating to compulsory vaccination and sanitation, or the requirements of standards to practice the medical profession. Disease was an inherent part of nature itself, the penalty for man's sins; as human history was supernaturally controlled and governed, so disease could not be eradicated except by miraculous intervention of deity.[2] The world was in the grip of the devil and his hosts and of demons who caused disease and death; behind this thought was the proof of authoritative scripture itself.[3] Hence, hostility arose to state activity, which sought to improve these conditions, or there was indifference to a program of reform; and this religious viewpoint, combined with an extreme individualism, which thought that every person had a natural "right" to practice any calling he chose, obstructed the pathway of the state and law in these matters. So also with respect to the juridical movement to enlarge the grounds for divorce, the religious notion was that scripture being law and it having provided, while the parties were alive, only one ground for the dissolution of the marriage status, the state was outside its sphere in arrogating to itself the authority to extend the

[1] It was a long and bitter struggle between liberals and orthodox theologians before the Bible was finally restricted entirely to religious matters—its true function. With regard to the opposition in orthodox religious circles to the employment of the historical method in biblical and ecclesiastical history, consult A. D. White, *A History of the Warfare of Science with Theology*, chap. ii, pp. 288–396; see also Houtin, *La Question biblique chez les catholiques de France en XIX^e siècle; La Question biblique au XX^e siècle;* Kübel, *Geschichte des katholischen Modernismus.*

[2] For a long time there was opposition to the use of anesthesia. The orthodox argument was that it was circumventing the divine plan of suffering or pain as a means of reminding fallen man of his sins. Happily, however, some scientist was able to prove scriptural support for anesthesia in the fact that when God created woman, he caused a "deep sleep" to fall upon him (Adam), before removing the rib. See A. D. White, *op. cit.*, p. 127.

[3] On the modern discrediting of miracles, consult Wendland, *Miracles and Christianity;* Whiton, *Miracles and the Supernatural;* Stange, *Christentum und moderne Weltanschauung*, Vol. II.

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possibility of divorce.[1] There was absent the conception, given us by the historical school of religion, that the scriptures embodied both divine and human elements and were not meant to govern the social customs and institutions or the pursuits of scientific inquiry in the twentieth or any other century.[2]

Thanks, however, to the inestimable results of sane biblical criticism, the Bible as the literary source of the religious spirit was restored to what was regarded its original position, namely, as a record of the experiences of religious persons with a vivid God-consciousness, from whom others in the quest for religious solace and comfort might refresh and inspire themselves for life's ills and activities.[3] The authority of the Bible became an authority of the spirit instead of the letter, a religious guide and not a law governing all the intellectual pursuits and social practices of men. It was gradually therefore believed—and is the dominant religious viewpoint—that social practices have very little to do with religion itself,[4] or that a particular theological doctrine had soteriological efficacy; but that the essential thing, the fundamental presupposition, involved in being religious was the life which it created in man.[5] More and more science and natural methods, including legal programs,

[1] The absolute separation of State and Church was a prominent idea from not only the time when the First Amendment to the Federal Constitution was enacted, but even down to recent times, although at present this idea seems to be somewhat modified. See *infra*.

[2] For the historical school of religion, consult Jastrow, *The Study of Religion*, containing besides valuable information an admirable bibliography. See also the dictionary *Die Religion in Geschichte und Gegenwart*, article "Religionsgeschichte und Religionsgeschichtliche Schule; Troeltsch, "The Dogmatics of the Religionsgeschichtliche Schule," *American Journal of Theology*, XVII, 1–21.

[3] For the present results of sound biblical criticism reference is made to A. C. Zenos, *The Elements of the Higher Criticism; Die Religion in Geschichte und Gegenwart*, article "Bibelwissenschaft"; and A. D. White, *History of the Warfare of Science with Theology*, chap. ii, pp. 288–396.

[4] "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices." Waite, C. J., in *Reynolds* v. *United States*, 98 U.S. 145, holding valid a federal statute against polygamy in opposition to the claims of an adherent of the Mormon church that the statute conflicted with the First Amendment to the Federal Constitution.

[5] For this viewpoint consult Selbie, *Schleiermacher: A Critical and Historical Study;* Cross, *The Theology of Schleiermacher;* Garvie, *The Ritschlian Theology;* J. Orr, *The Ritschlian Theology and the Evangelical Faith;* Wendland, *Albrecht Ritschl und seine Schüler.*

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replaced religious efforts to overcome and control environment or to cure the ailments of the individual or of society. Instead of praying out the weeds from his farm or garden, or asking miraculous intervention to allay his bodily ills, the modern religious man first called upon the man of science for aid, or upon the state, which, through laws and science, made possible the remedying of these situations. Crop bulletins issued by the states or federal government; boards of health, requiring vaccination and sanitary observances; calculations of the weather bureau; publication of vital statistics and scientific inquiries into social conditions; the enactment of eugenics laws—these were the aids which the religious individual of the present fostered and sought for in attempting more efficiently to adjust himself to his social and physical environment.[1]

Moreover, instead of assuming, as did the older theology, that the poor and unfortunate were a part of the social order of nature, affording stimuli to the more fortunate and religious "unto good works and thankfulness," the more modern religious man seeks through law to impose upon employers engaged in hazardous enterprises liability without fault and to provide for workmen's compensation, thus making possible a better and more livable existence.[2] In all these developments, though the cause is beneath the surface and is not always consciously expressed, it is believed that this altered viewpoint with reference to the scriptures is an efficient factor.[3]

[1] In *Petersen* v. *Widule*, 157 Wis. 641, a statute was upheld requiring from men only a certificate of freedom from venereal disease as a condition to marriage, the court saying: "I cannot imagine how this law can be said to interfere with worship or liberty of conscience. The notion that marriage was a sacrament, not a civil contract creating a status, once vigorously asserted, has long since passed away."

[2] "Juristic Theory and Constitutional Law," *Harvard Law Review*, XXXIII, 86. For the extent to which minimum-wage laws have been passed, and their constitutionality, consult "Legislative Minimum Wage for Women and Minors," *ibid.*, XXVIII, 89; and "Judicial Acceptance of Workmen's Compensation," *ibid.*, XXIX, 199. The federal Supreme Court recently held invalid the minimum wage law of the District of Columbia in *Adkins* v. *Childrens Hospital*, 261 U. S. 525.

[3] For further discussion see Shailer Mathews, *The Church and the Changing Order*, chap. iii; *The Gospel and the Modern Man*, chaps. iv–v.

How the abandonment of the idea of biblical legalism has affected ideas of marriage within the prohibited degrees is shown by the fact that today the general principle

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CHANGING VIEWS OF RELIGION AND OF LAW

Present theological thought travels along parallel lines with sociological jurisprudence in the emphasis which the former places upon the concrete or actual and in minimizing the value of the metaphysically correct or abstract. An a priori or intellectual formulation of the nature of Christianity, of God, of religion, or of sin, is abandoned; just as sociological jurists refuse to define in all comprehensive or inclusive terms the nature of law.[1] Likely none of these ultimate conceptions, which, in the words of Mr. Justice Holmes, are but the skin of human thoughts varying from age to age,[2] will ever be

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seems to be that mere affinity itself will not prohibit the formation of a valid marriage contract, in the absence of any other prohibitions. The Levitical Law was early adopted in England by the ecclesiastical courts. The statute of 32 Henry VIII, chap. xxxviii provided that "nothing, God's law excepted, shall impeach any marriage but within the Levitical degrees." The Levitical Law interdicted marriages based upon affinity (Lev. 18:6–7, 14, 15), with the exception that a brother surviving death of another brother was compelled, under certain circumstances, to marry his brother's widow (Deut. 25:5–10), the object being to perpetuate the name of the decedent's family. For the way in which American law has generally refused to follow the Levitical distinctions with reference to affinity see Peck, *Law of Persons and Domestic Relations*, pp. 131–33; incestuous marriage as void or voidable, L R. A. 1916, C. 723–32.

Courts usually take judicial notice of the fact that it is the common belief of the great mass of people that vaccination is a preventative to many diseases. See *Commonwealth* v. *Jacobson*, 183 Mass. 242, 197 U.S. 11. And the fact that an individual may have religious scruples against the use of medicines for his children does not excuse him in the eyes of the law if he has failed to make adequate provision for them, *Owens* v. *State*, 6 Okla. Crim., 110, also 27 A.C. 1218, 1221.

[1] "Every age has its own 'Christianity,' the specific traits of which are due to the working over of inherited beliefs under the pressure of new problems. . . . . There is no fixed authoritative type. Christianity is always in the making." G. B. Smith, *A Guide to the Study of the Christian Religion*, p. 506. For a clear discussion of the developmental character of Christianity see Case, *The Evolution of Early Christianity;* also Troeltsch, "Was Heisst Wessen des Christentums?" in *Christliche Welt* (1903), cols. 443 ff; and *Die Absolutheit des Christentums und die Religionsgeschichte.* Compare a similar idea as to the nature of law by Roscoe Pound, "Theories of Law," *Yale Law Journal*, XXII, 114. See also the viewpoint of the metaphysical jurists, particularly as enunciated by the neo-Hegelians, in Kohler's *Lehrbuch der Rechtsphilosophie*, 3d ed., chap. i. With reference to the altered viewpoint regarding the nature of God consult Johnson, *God in Evolution;* Hocking, *The Meaning of God in Human Experience;* and for new views in religion see Foster, *The Function of Religion in the Struggle for Existence.*

[2] *Towne* v. *Eisner*, 245 U.S. 418, 38 S.C.R. 159.

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absolutely or completely solved. Why, therefore, should present-day theological thought, with its rich experience from the mistakes of the past in these fields concern itself in purely intellectual mysteries to the neglect of the concrete religious needs of the individual and of the social group?

The individual and his religious needs must together work out an experiential, individualistic conception of God, based upon companionship with a "power not ourselves making for righteousness." So also the economic needs of the individual and not some abstract notion of liberty of contract or no liability unless faults are made the criteria of present jurisprudence in enacting new social legislation or upholding it after it is passed. The nineteenth century, a century of expanding commerce not yet ended, unduly stressed the rights of property and contract to the neglect of the economic and moral needs of the individual.[1] On the contrary, the twentieth century, in an era when religious ideas of the eternal worth of man as a potential member of a divine kingdom of God are dominant, is once more seeking to restate and refashion the inherited law in order to satisfy to the individual and group a maximum of wants with the least sacrifice of others; law is a means to an end, rather than an end in itself. Whether religious leaders have consciously in mind the various special movements in the law to realize this objective may be doubtful; but the end is certainly articulate and finds definite expression.[2]

The older theology, with its belief that the Old and New Testaments were equally authoritative in all their utterances, took its conception regarding the sanction of law from the supposedly divine content as revealed in the Mosaic moral code.

[1] Rudolf Jhering, *Scherz und Ernst in der Jurisprudenz*, 9th ed., p. 408.

[2] The movement toward Christian union, coming largely from the mission field, but also from a consciousness that doctrinal differences should not be a wall of separation, is an example of the tendency to abandon metaphysical doctrinal correctness and to emphasize a program of concrete social improvement. See *Reports of Edinburgh World Missions Conference; Publications of Federal Churches of Christ;* and *Investigations of the Interchurch World Movement into Conditions in the Steel Industry;* also J.S. Dennis, *The Modern Call of Missions*, chap. ix. "Union Movements in Mission Fields."

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We observe a similar idea in the time of the Middle Ages as expressed in the thinking of Aquinas, and see its revival in the sixteenth century by Melanchthon. The notion is that all positive law, as it has been enacted by the sovereign, or expounded by the judge, is merely an unfolding or amplification of certain eternal principles once given by divine revelation. But, today, with the viewpoint that the Old Testament is merely a record of the experiences of only one Semitic race, very similar to that of surrounding nations; and, with the discovery that the Mosaic legislation appeared quite late in the history of mankind and can be found in substance before this time in the clay tablets and monuments of antecendent races, as these have been unearthed by the pick and spade of the archaeologists—the belief with reference to the sanction and nature of law has been profoundly altered.[1] The idea is prevalent among religious leaders that law, as we have inherited it, is after all only some convenient arrangement which will best meet the needs of the present moment; it has no peculiar sanctity or sacredness; it embodies no eternal and unchangeable principles; it is the creation of society itself based upon experience how a particular rule or standard works out; it is not something given to men. Sociological jurisprudence, while not stressing any particular conception with reference to the sanction or nature of law, is fundamentally in sympathy with the religious viewpoint. For this school of legal philosophers also

[1] A wealth of material setting forth the discoveries of archaeologists and their bearing on the Old Testament may be found in the following: Breasted, *The Development of Religion and Thought in Ancient Egypt;* Jastrow, *Die Religion Babyloniens und Assyriens;* Rogers, *The Religion of Babylonia and Assyria;* Bade, *The Old Testament in the Light of Today;* H. Preserved Smith, *The Religion of Israel: An Historical Study;* Marti, *The Religion of the Old Testament: Its Place among the Religions of the Nearer East.*

For environmental influence upon the statement and formation of early Christianity consult E. Hatch, *The Influence of Greek Ideas and Usages upon the Christian Church;* S. J. Case, *The Evolution of Early Christianity;* Schürer, *Geschichte des jüdischem Volkes im Zeitalter Jesu Christi;* Kennedy, *St. Paul and the Mystery Religions;* Cumont, *The Oriental Religions in Roman Paganism* and *The Mithraic Mysteries;* and Dill, *Roman Society from Nero to Marcus Aurelius.*

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regards the law merely as that which will most conveniently meet the largest number of human wants, consistent with social advantage or benefit, with the least sacrifice of others; it does not regard the law as we find it to be something given to men, incapable of improvement by human effort; but, on the contrary, it thinks the law is a product of increasingly conscious, determinate human will, capable through intelligent effort of being made more and more efficacious for the purposes of man.[1]

Not only has the modern religious individual passed under the complete domination of the scientific mode of viewing the universe and its problems, but, due to the doctrine of biological evolution, he has taken a view of dogmas and institutions which is formulated in relative and not in absolute or final terms. Whatever may be the truthfulness of this relative viewpoint, the fact nevertheless remains that religious thought, and likewise legal philosophy, has been colored by its presence in our world of thought.[2] No longer does the liberal religious mind hold that finality or absoluteness in religious doctrines or institutions has been reached; the inherited dogmas are being re-examined in the light of the religious needs of the present.[3]

So also there has been a similar development in the field of law and modern juristic thought. Old premises are being called in question and much of the common law of our ancestors is being found inadequate to govern the complex activities and new conditions of today.[4] Even conservative England is

[1] Albertsworth, "The Changing Conception of Law," *American Bar Association Journal*, November, 1922; "The Program of Sociological Jurisprudence," *ibid.*, July, 1922; Munro Smith, "Four German Jurists," *Political Science Quarterly*, X, 664; XI, 278; XII 21; Jhering, *Law as a Means to an End*, pp. 330–32.

[2] E. C. Moore, *Christian Thought Since Kant*, chaps. iii and iv: Stammler, *Lehre von dem richtigen Rechte*, chap. iii.

[3] For suggestive remarks why the traditional religion needs revision consult McGiffert, *The Rise of Modern Religious Ideas; Protestant Thought before Kant;* G. B. Smith, *Social Idealism and the Changing Theology;* G. B. Foster, *The Function of Religion in Man's Struggle for Existence.*

[4] Albertsworth, "The Need for New Premises in the Law," *American Law Review*, LVI, 17.

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overturning its entire body of antique real-property law.[1] Worked out in a simpler, more unified and homogeneous age, it is found by many thoughtful legal scholars that some of the inherited legal doctrines and institutions and modes of reasoning do not function in the present. The doctrine of the separation of governmental functions is no longer thought to be one based upon metaphysical conceptions as to the nature of government; it has yielded to the exigencies of governmental and business needs. The old legal doctrine of liability for fault only has crumbled in many directions before the onslaught of social and religious reformers in behalf of the poorer and more unfortunate classes. And so have fared other doctrines or premises of the common law, as assumption of risk, contributory negligence, and the fellow-servant rule.

In all these developments and changes in the law it is seen that the old Puritan notion of an abstract man, governed by an objective standard of freedom and moral responsibility and therefore liable for his acts, has passed away in many fields of the law, and in some others is slowly expiring. On the contrary, the individual as he is found living in human society in the struggle for existence is made the object of both religion and law in working over inherited religious dogmas and legal doctrines; systemic or metaphysical treatment of both are sacrificed to the economic and moral needs of the human being.[2]

THE IMMANENCE OF GOD AND LAW REFORM

The immanence of God is a leading conception of present-day religious thought. It has two meanings: one a philosophical or metaphysical one, synonymous with pantheism; the

[1] Hudson, "Current Law Reform in England," *Harvard Law Review*, XXXIV, 640; also *Law Quarterly Review*, XXXVI, 107; *American Bar Association Journal*, VIII, 485.

[2] "If the scheme of legal conceptions does not express what the consciousness of right brings to the surface in practise, then the scheme of legal conceptions must be altered, for it is false or out of date." Sternberg, *Allgemeine Rechtslehre*, I, 190–91. Compare a similar idea among present religious leaders in McGiffert, *The Rise of Modern Religious Ideas*, chap. ii.

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other a more purely religious meaning of a God who is the untiring co-worker with men, always dynamically present in their spiritual endeavors. It is said by some liberal theologians that our inherited doctrine of God as an absolute sovereign, governing the world and human relations by inscrutable laws and decrees, comes from a time when politically it was an age of divine right of kings who could not be called to account by the people.[1] As a consequence, due to the transcendence of God in either theism or deism, there was absent the present conception of a God working with man—in fact, needing him —to improve the present world; and, when with this conception of God there was combined the further notions of apocalypticism and chiliasm, the belief became more pronounced that it was futile and useless to attempt to improve through human effort and law the existing social order.[2] It would be interesting to study what connection, if any, existed between this mode of religious thought and a similar view in legal philosophy as expounded by the historical school of jurists, who placed little faith in the efficacy of human effort to change the existing law. In the present, however, in the words of a liberal theologian, representing the dominant religious mind:

Men who believe in democracy insist on worshiping a God whose excellence is to be found not in an aristocratic "sovereignty" but rather in a self-sacrificing identification of himself with his children in their

[1] Gerald Birney Smith, *A Guide to the Study of the Christian Religion*, p. 516; also in same work, Shailer Mathews, "The Historical Study of Religion," pp. 51 ff. The Greek conception of a metaphysical, unchangeable Absolute and the Hebraic conception of an anthropomorphic Being came together at Nicea in 325 A.D., and resulted in the formulation of the received dogmas of the Trinity. This dogma was perpetuated by the Medieval Church and the Schoolmen and taken over by Protestantism. That it has profoundly influenced the belief regarding the sanction of law as fixed and unchangeable see my article in the November, 1922, number of the *American Bar Association Journal*, "The Changing Conception of Law."

[2] The Natural Law School of Jurists, with their belief that law represented certain unchanging, eternal principles of justice and right, formulated a juristic theory that the purpose of law was to maintain the social status quo in legal institutions and doctrines. See Pound, "The End of Law as Developed in Juristic Thought," *Harvard Law Review*, XXVII, 605; XXX, 201. The effect of the historical school was the same, as it identified the received or inherited law with natural legal institutions and doctrines.

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endeavors after righteousness. . . . . No longer do we seek the aid of personal cosmic spirits in practical life. . . . . The anthropomorphism of former days is inapplicable to our present situation.[1]

A natural concomitant of this view of the divine immanence has been to annihilate the sharp antithesis between the sacred and the secular, the present and the future, the human and the divine. A greater appreciation of the worth and sanctity of the present natural or social order, as well as man himself, is found in the thinking of the modern religious individual. That this idea is behind the movement in the law to conserve natural and human resources is at least arguable. All life and activity is now miraculous and supernatural in that it represents the outworking of an immanence making for individual and social righteousness. Through not only religion but also through law, by improving the existing social system, conserving natural and human resources, and making this world a better place in which to live, is man able to assist in the process of a divine, immanent teleology.[2] Troeltsch, in pointing out the difference in viewpoints between the medieval and modern religious mind, says:

A valuation of the present world for the sake of the riches and beauty of the world, an estimation of the goods attained in the progress of civilization because of an independent ethical value attaching to them, is consequently impossible. But precisely such a valuation of these things is the characteristic feature of the modern feeling toward the world and civilization.[3]

It would be an interesting study to ascertain what influence this dynamic and evolutionary conception of God may have had upon statesmen, lawyers, and judges, and the younger genera-

[1] G. B. Smith, *A Guide to the Study of Religion*, pp. 514, 517.

[2] For further study, consult Hocking, *The Meaning of God in Human Experience;* Wobbermin, *Der christliche Gottesglaube in seinem Verhältniss zur heutigen Philosophie und Naturwissenschaft;* Johnson, *God in Evolution;* and Youtz, *The Enlarging Conception of God.*

[3] *Protestantism and Progress*, p. 77. For further literature see Gladden, *Ruling Ideas of the Present Age;* Freemantle, *The Gospel of the Secular Life;* Bowne, *The Divine Immanence;* and G. B. Smith, *Social Idealism and the Changing Theology*, chap. ii.

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tion who are only now beginning to follow their footsteps, as the religious leaders of the present have enunciated this idea by written or spoken word. That in these professions and callings one may serve God acceptably; that there is no ecclesiastical monopoly of service in the church itself; that God needs the help of wise and thoughtful individuals in the body politic and in reaching an earthly kingdom of God—all these results might plausibly be said to flow from this changed conception with regard to the nature of God and the relationship he sustains to the world and man.[1]

THE DOCTRINE OF MAN AND LEGAL RESPONSIBILITY

There is another fundamental presupposition of the current religious mind which appears to be influencing the law in a profound manner; reference is made to the doctrine with respect to the nature of man and of sin. The soteriology of the past, which the present has inherited, presupposed the historicity of the fall of Adam and that mankind needed to be saved from the taint of original sin. The traditional doctrine of atonement was stated in terms of an age which thought differently from our own. "Without the shedding of blood

[1] "One who believes in the possibility of this co-operation with the divine purposes is stimulated to an optimistic idealism with surprising possibilities. One is not daunted by seemingly insuperable difficulties. . . . . While one prays that the Kingdom of God may come, one also rejoices in the opportunity to have a share in bringing in the better day."—G. B. Smith, *Systematic Theology and Christian Ethics*, p. 573.

Kohler has pointed out that psychic moods occur in society just as in the individual, in these words: "There are periods in which the inner life of men is entirely devoted to feelings and emotions, and in consequences their power of resolution become paralyzed, and the life that finds expression in deeds is almost completely suppressed. . . . . Religious fanaticism, which leads to an undervaluation of material things and to a congregationism and communism, based on complete severance from all earthly endeavors (is one of these psychic factors opposed to the altruism already mentioned)."—*Lehrbuch der Rechtsphilosophie*, pp. 22–24. See also Ross, *Social Psychology*, chap. iii.

The psychology of religion of the present has assisted in dispelling the traditional notion that mysticism or pietism is religion, and this new conception has undoubtedly led to the altruistic reaction in favor of the welfare of others. Ames, *The Psychology of Religious Experience*, chap. iv. As a consequence the doctrine of divine immanence in its emphasis upon service for others has been more influential than appears on the surface.

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there is no remission of sin" may have meant something to an age which was accustomed to bloody sacrifice or capital punishment, but today, when neither of these ideas is favorably received by religious leaders, or even by some courts, the older theological doctrine has been profoundly modified.[1] Whether a liberal view be adopted that man, because of the immanence of God, is essentially good, free from original sin, or whether the viewpoint be that man though apparently sinful is in a process of development to a higher moral plane, the conception is that his sins are due to ignorance, heredity, physical conditions, or an unfavorable external environment; and that if these can somehow be remedied, even only partially, there will be less of crime and less danger to social security, with the consequent saving of the individual himself.[2]

The older theological thinking believed sin and crime in the world to be ineradicable, and that as a consequence the crime and not the criminal should be punished, in order not only to revenge the wrong done to the state, but also to deter the commission of similar acts by others; the approach was a priori or mechanical, and not a posteriori or scientific. Complete legal responsibility attached to a full moral responsibility, without investigation whether the individual could be saved to society, or whether society itself were to blame for his crime; essentially a being of original sin, the criminal was receiving only what he deserved through the penalties inflicted. Today, on the contrary, we desire to know what are the facts concerning heredity; whether moral delinquency is due to what we inherit or to the social environment and education of the individual. How much does an enfeebled body influence the

[1] Shailer Mathews has admirably shown how the various social minds of the past formulated the doctrine of God and Atonement in terms of social experience. See "Social Aspects of Theology," June, 1915, *Biblical World;* "Theology from the Standpoint of Social Psychology," *Journal of Religion*, III, 337.

[2] Asexualization by vasectomy as a penalty for the crime of rape is an indication of the present tendency to deal with the criminal having such propensities, thus individualizing the punishment and protecting society in the future. See *State* v. *Woodward*, 68 W.Va. 66; *State* v. *Feilen*, 70 Wash. 65.

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commission of anti-social acts? Further, what is the effect of overcrowding and undernourishment?

Poor eyesight or adenoids may so exclude a child from normal conditions of activity as to induce hopelessness and passionate attempts to find relief through lawlessness or trickery. Employees may be compelled by industrial conditions to do dishonest work, knowing that it is dishonest.[1]

The newer religious thinking of the present, in view of the data given us by psychology and sociology as applied in criminology, seeks to individualize the punishment consistent with the protection of the social group; to reform the criminal; to minimize the possibility of crime by juvenile court correction; by separate confinement of the more hardened criminal to protect the occasional offender;[2] through indeterminate sentence to administer mercy as well as justice rather than to wreak vengeance; and through boards of pardon to give the criminal a chance to redeem his life. The penitential system of the church is sought to be employed rather than the inherited legal conception of punishment to prevent crime. Saleilles tells us that in the penitential system of the church,

It is not the crime but the criminal alone that is . . . . regarded. The legitimate purpose of punishment is to make of the criminal an honest man if that be possible; or, if not, to deprive him of the chance of doing further harm.[3]

The idea that man was essentially and inherently evil, tainted with the original sin of Adam's fall, has been shown to have colored the function of the judge in our Anglo-American law.[4]

[1] Smith, *A Guide to the Study of the Christian Religion*, p. 522. For literature on the changed conception of man and sin consult Rauschenbusch, *Christianity and the Social Crisis; A Theology for the Social Gospel;* Ross, *Sin and Society;* Vedder, *The Gospel of Jesus and the Problems of Democracy;* and Hyde, *Sin and its Forgiveness.*

[2] See *Annual Report of Federal Prisons Commissioner, 1922, to the Attorney General of the United States.* For the various reforms in criminal law enumerated above see *Journal of Criminal Law and Criminology*, Vols. X, XI, XII.

[3] *Individualization of Punishment*, pp. 10–12.

[4] Pound, "Puritanism and the Common Law," *American Law Review*, XLV, 811; *Spirit of the Common Law*, chap. ii; "The Pioneers and the Common Law," *West Virginia Law Quarterly*, XXVII, 1.

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Puritanism is thus responsible for creating much of our present dissatisfaction with court organization and procedure and the administration of justice. But now, with the viewpoint that man if not essentially good, yet will do the right thing in his upward struggle, the religious thought of the times would favor greater freedom on the part of the judge or official as he administers justice; the older theological thinking assumed that man, if not controlled by rules of law or society, would do wrong; the newer religious thought assumes man will attempt the right, being controlled in his act either by tendencies of his better nature or the restraining influence of the group mind.[1] Hence, giving power to courts to make their own rules of procedure and enlarging their powers of discretion in the administration of justice, with but few superimposed legal rules, and in the enactment of declaratory-judgments laws and creation of small-claims courts for the poor and unfortunate to obtain justice, reflect not only the dominant desire for more speedy justice but also the religious viewpoint with regard to the nature of man and the further conception that in the interests of the individual and the advancement of the kingdom of God the substance of controversies and their speedy solution should be the desideratum.

CO-OPERATION BETWEEN CHURCH AND STATE

Besides the present tendency of the religious mind to co-operate with the state in securing social reforms, in some instances the church attempts to advance further by endeavor-

[1] Many of our received rules of law were crystallized under theological doctrines with reference to the inherent evil of man; such were the rules which forbade one testifying in his own cause; excluding hearsay evidence because the party was not under oath and facing the jury. The former has been completely abandoned, and the latter is being waived by contract between parties themselves, or statutes are conferring upon administrative tribunals power to consider hearsay evidence as well as other kinds. Liberal language is used by the courts today regarding the nature of man and his tendency to do right, which would have been condemned a hundred years ago. See the two cases of *National Exchange Bank* v. *Lester*, 194. N.Y. 461, and *Jones* v. *Bangs*, 40 Ohio St. 139.

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ing to employ the state and the law to inaugurate some program of religious reform. In the past in American history, due to the existence of a strong religious individualism brought about by the struggles for religious liberty on the part of the colonists, the dominant attitude was that church and state should be kept separate. Neither was to encroach upon the legitimate spheres of the other; each had a specialized function to fulfil, with which the other could not, nor should, interfere. The less that the religious group had to do with law and the less that law had to do with religion the better for both.

Today, on the contrary, the idea is growing that both law and the state are social agencies to be used by the religious spirit in seeking to achieve its goal of a more perfect, ideal society here and now. In securing the enactment of prohibition legislation the religious forces quite naturally joined with others, but the impetus to this social experiment came largely from religious leaders and religious idealism. Again, the fundamental belief that war or the settlement of international differences by force can be considerably minimized if not totally prohibited through some league of nations or by some international tribunal or court has also its origin in the religious mind; finding justification for this belief either in some prophetic teachings of the Bible, perhaps given increased impetus by a religious reaction after a period of war, or in the conception that human effort, motivated by religious idealism, can make this a better world in which to live.[1] Moreover, it is observed that at times there are seemingly sporadic attempts made to secure legislation against Sunday labor in particular, and not merely for one day's rest in seven; but these attempts are by no means scattered or only occasional, for congressional records and other data show us that for several decades an organized movement has been in progress, and is still going on,

[1] It need hardly be said that the various schemes in European history for world-organization and international peace tribunals, as exemplified in the suggestions of Henry IV and Czar Alexander I, originated from religious idealism.

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to accomplish this particular objective.[1] This belief that state and law must advance religious programs of reform is at times seen also in the efforts made by the less dominant religious mind to secure legislation against the teaching of certain scientific theories, as evolution and geology, in state universities, it being thought that in this manner religion will more certainly maintain its traditional or inherited dogmas.[2] While it is doubtful whether the dominant religious mind believes in the wisdom of this particular policy, nevertheless the effort itself to secure a closer co-operation between religious organizations and the state, reflects the attitude of the religious leaders generally.

Certainly, it must be admitted that the religious mind of the present is having its influence upon the law in many directions, and perhaps the full import cannot now be felt or understood. In the words of Kohler the present religious mind is one "when people devote themselves to the welfare of others . . . . and seek not only to raise up the man who is less favorably situated, but actually to indulge him."[3] It is not an age given over to a religious emotional life, but it is a rationally critical age, dissatisfied with the past and present in both religion and law, an age in transition in both fields, an age which believes its future is yet before it and therefore yet to be realized.

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[1] Reference is made to such organizations as the Lord's Day Alliance and the Federal Council of Churches.

[2] Compare the recent attempts made in some southern states to prohibit the teachings of evolution in state universities. *Science*, April, 1922.

[3] *Lehrbuch der Rechtsphilosophie*, pp. 22–24.

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THE ETHICS OF THE PROBLEM

NORMAN BOARDMAN

One of the problems of ethics is that of developing the ethics of the problem. By this we mean the relating of various ethical concepts to the problem. Ethics is approached from the standpoint of the problem just as logic is approached from that angle. In logic we aim to determine the rôle of inference, judgment, data, meaning, hypothesis, etc., in the solution of the problem; likewise in ethics may we endeavor to group such concepts as good, right, justice, freedom, responsibility, etc., about the problem and to assign to them a definite function in an ethical situation.

The ethics of the problem may be contrasted with the ethics of metaphysics. Kant's *Metaphysics of Ethics* was erected primarily in the interests of a metaphysical ethics. The ethics of metaphysics is an ethics of abstractions, i.e., the meanings of moral concepts generated out of concrete social situations are isolated from the situations in which they appear and are given an independence of their own. Such a process is represented by "The Goodness of Good," the "Rightness of Right," etc. The ethics of the problem, on the other hand, is the ethics of specific situations. The interest is that of finding a definite good and an actual right in a given situation.

In a stimulating article[1] Professor Mead has pointed out the relation of the different branches of philosophy to the problem. A résumé of his excellent analysis is here given not only for the purpose of getting our bearings but also of showing the inadequacy of any stage other than the ethical for meeting moral requirements.

A problem is presented when a conflict in experience demands adjustment of the situation in which the conflict

[1] "Some Suggestions for a Philosophic Discipline," *Phil. Rev.*, 1900.

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appears. Logic represents the method by means of which the conflict is mediated and the problem solved. It stands for the whole process of solution from the point where the conflict arises to the point of adjustment. Psychology comes in where the problem arises, i.e., where the self is thrown back upon itself because of obstructed activity. Self is therefore set over against the object and becomes conscious of itself as such, i.e., as something other than the object. Psychology, then, represents the point where consciousness appears.

Thought is functional and aims at an effective solution of the problem that activity may continue. In the process of devising a means for solution it is quite possible that thought forget the immediate problem and fly off on a tangent, so to speak. Here we get metaphysics. It is the abstracting of some elements of a problem from the situational complex and setting them up as entities, i.e., taking them out of the concrete situation that alone gives them meaning and attributing to them an existence apart from this situation. When such a process continues to the point that it is impossible for thought to bring its products back into experience, a problem is set up to which no solution can be found because such a solution would necessarily transcend experience.

If, however, thought continues in its logical rôle, some kind of activity is demanded. Thinking thus has a reference to future conduct, viz., that type of conduct that will perfect the necessary adjustment. So long as we consider the mere *how* of adjustment our problem is primarily a logical one. It is when we begin to ask the question as to the kind of adjustment that should be made, i.e., when we begin to consider the *how ought* of adjustment, that the problem begins to take on ethical aspects. Ethics goes beyond logic. It not only seeks an adjustment but it seeks the best possible adjustment that skilled judgment[1] is able to offer with reference to a given situation.

[1] The statement is qualified by "skilled judgment" because no human intelligence can foresee the best possible results.

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Ethics has a forward look while aesthetics has a backward look. When a problem is solved, the individual is then able to assume an aesthetic attitude with reference to it, i.e., he is able to look over his activity with an appreciative attitude toward his own achievement. This is the place for the aesthetic in connection with the problem. To assume the rôle of the aesthetic in the midst of a problem is fatal.[1] It blocks activity and leaves the individual stranded within himself, incapable of operating effectively on objective material. To take this aesthetic attitude in the face of a problem gives rise to dreams and reverie but is equally feeble in its control of conditions of the problem.

It is this misplacement of the aesthetic attitude toward a problem that gives rise to the psychological stage referred to above, viz., the separation of self from its object. The self instead of being projected outward in the object of its activity is thrust inward upon itself. It acts *for self* rather than *as a self*. The activity is therefore abnormal. Professor Dewey has so well stated the results of such activity that the passage is quoted in full:

> Many good words get spoiled when the word self is prefixed to them: Words like pity, confidence, sacrifice, control, love. The reason is not far to seek. The word self infects them with a fixed introversion and isolation. It implies that the act of love or trust or control is turned back upon a self which is already in its full existence and in whose behalf the act operates. Pity fulfils and creates a self when it is directed outward, opening the mind to new contacts and receptions. Pity for self withdraws the mind back into itself, rendering its subject unable to learn from the buffetings of fortune. Sacrifice may enlarge a self by bringing about surrender of acquired possessions to requirements of new growth. Self-sacrifice means a self-maiming which asks for compensatory pay in some later possession or indulgence. Confidence as an out-going act is directness and courage in meeting the facts of life, trusting them to bring instruction and support to a developing self.

[1] There is a sense in which the aesthetic attitude is essential with reference to a problem, viz., that of putting one's self in the situation to gain a sympathetic understanding of the problem.

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Confidence which terminates in the self means a smug complacency that renders a person obtuse to instruction by events. Control means a command of resources that enlarges the self; self-control denotes a self which is contracting, concentrating itself upon its own achievements, hugging them tight, and thereby estopping the growth that comes when the self is generously released; a self-conscious moral athleticism that ends in the disproportionate enlargement of some organ.[1]

The fallacy is due to the conception of self as a ready-made something. Acting for self gives the individual a separate existence; acting as a self recognizes the fact that the individual is in the making, that the self is to be realized in the outcome of the situation. Self is a constant achievement.

We have seen the place of ethics in a problematic situation and are now ready to continue our analysis with reference to various ethical conceptions. Centering our attention around the problem, what is the function of good, right, freedom, responsibility, duty, virtue, justice, happiness, and the ideal as they relate themselves to the problem?

The good is that which is to be created as the result of the problem. It is unique[2] in that it is never identical with itself in any two situations. Each situation has its own complexion that renders it specific. Good is dependent on the conditions of the problem, and if the situation be really problematic, it must be determined in accordance with the demands of the problem. Good is both creative and created. The good resulting from successful copings with problems serves as data for a like coping with the present problem. It is creative in that it aids in the creating of the new good, the good to be realized as the result of the problem. When brought to bear upon the problem as the good that must again be realized regardless of conditions of the problem, it then functions as an end rather than as a means to an end which is as yet unknown. It may thus defeat the good for the problem. The problem

[1] *Human Nature and Conduct*, pp. 138–39.

[2] Cf. Dewey, *Human Nature and Conduct*, pp. 210–23.

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has its own good, and when created good functions as hypothesis rather than as data from which the hypothesis is to be drawn, it simply ignores the problem. It assumes a fixed good and fails to recognize that the problem is that of finding out what will be good and going ahead to make it real. The point is well illustrated by the Golden Rule as a universal means to the good. The individual has had an experience which he judges as good. He would now like to do unto another as the other has done by him. But the conditions of the problem are such that he is not able to reproduce this good. He may apply the Golden Rule. This, however, does not help him because the situation is such that he honestly does not know what he would want another to do unto him under these conditions. His problem is that of finding out how to apply the Golden Rule here. It may serve as a tool for analysis, but it does not point directly toward the good. If it did, he would not be involved in a moral situation. If he insists on the good as he originally conceived it, the good of the problem as seen by enlightened judgment may be defeated.

Right is a means to the good, but it does not follow from this that any means to the good is necessarily right. Right is therefore just right, as Professor Tufts[1] says. The writer agrees with Moore that "right is a means to the good," but he also agrees with Tufts that it is "just right."[2] In accepting both positions we are not necessarily involved in a contradiction. It is difficult to see how a judgment of right can be made without reference to some good that is conceived, and it is equally difficult to see how any line of conduct can be judged as right simply because it is an effective means to that good. The former would force judgment to operate in a vacuum while the latter would reduce ethics to mere logical considerations. We would not regard the death of Socrates as right even if he has exerted a greater influence on posterity than he

[1] Cf. essay on "The Moral Life" in *Creative Intelligence*, pp. 382–86.

[2] Cf. G. E. Moore, *Principia Ethica*, pp. 147 f.

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otherwise would have done had he not been ordered to drink the poisoned hemlock. Here the right is just right, but it is not detached from the good, viz., that of Socrates' life. Right as just right is a means to the good even if it be a lesser good from the standpoint of quantity. The quality of the good may be sufficient to counterbalance a greater quantity of good. It may be intrinsic as in the case of the life of Socrates. A judgment of right that requires its good to be projected into eternity in order to be judged as such is nonsense and should be checked up by calling a halt in the temporal order that the human perspective may be kept in sight. This is the fallacy of owing all to the future, the indulgence in which war necessarily exacts of us.

Right is just right because good is just good. It is the uniqueness of good that makes right just right in a given situation. The just right of right refers to an immediate judgment of right rather than to an absolute rightness of right. Right is just right not because certain conduct is always right under all conditions and circumstances but because it is right here and now. Thus we believe that men should be free to worship God as they please, but when a religious cult puts a moral sanction on polygamy to justify a beastly practice, we judge it right that the state interfere with such freedom of worship, not because it is right that the state do this on general principle but because it seems just right with reference to mormonism.

If we are to do right for the sake of the good we must be free in our choice of both good and right. "True freedom is intellectual." It consists of knowing how to do things and possessing the means for effective execution of the acts involved in such doing. The free man is he whose habits and resources are such that he is able to meet successfully the problems of life. Resources without moral and intellectual habits for intelligent action render a man as much a slave as do proper moral and intellectual habits for such conduct without adequate resources. The former is a slave to himself, while the latter is a slave to

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social and economic conditions. Both must act on the idea of another, and this is Plato's conception of slavery. Freedom is ability to analyze a situation and power to execute the demands of such analysis. It is control of nature, both physical and human, for the control of events.

It follows that if an individual is free with reference to a problem, he is responsible for the outcome of the situation in which the problem arises. Responsibility refers to the part played by the self in a given situation. An individual is responsible when his self is an integral part of a situation, i.e., when it is the determining factor in the outcome of the situation.[1] If the self makes no difference to the situation, the individual cannot very well be held responsible in the matter. His responsibility enters where the kind of self he is able to bring to bear upon the situation is going to make a difference in the outcome of that situation. If a certain type of self is required for the situation and the individual is unable to bring that type of self to bear upon it, he cannot now be held responsible in the matter. His responsibility is located at the point of formation of the habits that check his freedom of action. If, however, he has it in his power to inject the necessary self into the situation and fails so to do, he is responsible in the case. Thus, if a man is struck by lightning the self makes no difference to the situation. It is not a case in which the self figures either one way or the other. If, on the other hand, a patient is about to undergo a delicate operation and the outcome is dependent on the skill of the surgeon, it is obvious that the kind of self he is able to bring to bear on the situation is going to be the determining factor in the situation. A physician who, because of pecuniary interests, refuses consultation when he knows his own information inadequate to a case, may be held responsible for that case. A different self on his part might have made possible the introduction of a more competent self, a self with sufficient knowledge for the case.

[1] The writer is indebted to Professor Mead for this theory of responsibility.

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There is a distinction between causation and responsibility. The self does not cause, but may be responsible for a cause. The causes are in the forces operating in nature. Self injects new factors into the situation that make the causes work differently than they would were these factors not introduced. It intervenes in the chains of causation operating in the problematic complex. It modifies the causes so that they act one way rather than another way. Since the judgment of no human being is infallible in the manipulation of causal sequences, ignorance is always a factor in every problem. A reasonable ignorance is excusable, but an unpardonable amount of it ought not to be tolerated as a plea for escape from responsibility. "We are not half hard enough on ignorance" in many instances.

A consciousness of responsibility involves an object of duty. Duty is felt when the individual recognizes a certain kind of self as essential to the situation. If the habits are such as to make the rôle of such a self seem difficult for the individual to assume, he experiences a conflict. The older self, represented by an organization of habits pleasurable in their customary expression, is set in opposition to the self that is conceived as the better self, the one demanded by the situation in which the problem arises. It is this feeling of conflict that gives rise to the *ought* of duty. So to organize the self that the habits are flexible, that new types of response may be perfected as conditions may require, is the place of duty. The former mechanism of response is felt as inadequate for present requirements. Duty calls for a reconstruction of self in the light of the problem. It also calls for a reconstruction of the object, but when the self is felt adequate to such reconstruction, duty as such may not be felt. Self is then able to meet the situation without experiencing the compelling restraint of duty.

The disposition for perfecting a better adjustment of the situation than that required by the demands of the problem is virtue. Virtue is located in the disposition brought to bear on any situation. It is more than duty.[1] Duty is negative

[1] Cf. Sidgwick, *Methods of Ethics*, Book III, chap. xi.

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as compared with virtue, which is more positive in character. Figuratively speaking, a man may do his duty if he just keeps out of jail, but we would not regard him as virtuous. We praise virtue, but accept duty as a matter of course. We censure a man for not doing his duty, and it is not until we see the results of failure in the performance of duty that duty is regarded as at all praiseworthy. Virtue presupposes duty, but duty does not necessarily imply virtue. A virtuousness that is not keen and alive to duty possesses no virtue. This is the fallacy of abstract virtues. Dispositions that have produced good results in many instances are set up as something to be cultivated apart from social situations. The ignoring of the problem gives rise to a blindness to duty, and this in turn deprives the disposition so operating of its virtuous character. Loyalty and benevolence apart from intelligence in their exercise are cases in point. Duty is demanded by the setting of the problem, while virtue is ability not only to meet the requirements of duty but ability to meet more than those requirements. If duty cannot be performed unless the nervous system is so organized that it becomes an ally rather than an enemy of the individual, much more must this be true in the case of virtue. Both self and object or either self or object must not only be reconstructed in the light of the problem, but such reconstruction must be perfected to an extent not necessarily demanded by the requirements of the problem if virtue is to be realized.

This principle applies to nations as well as to individuals. A nation that cannot change its customs to meet the demands of reconstruction is not even fulfilling its international obligations, say nothing of assuming a virtuous attitude toward progress. It may have been our duty to promulgate the Monroe Doctrine as the basis for our foreign policy in 1823, but to insist upon its maintenance as a virtue in 1919 shows failure to sense adequately the problem of promoting the peace of the world by means of perfecting an international organization for that purpose. Even duty demands more than the mere negative policy of doing nothing to start a war in this case; it requires active

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measures in the positive promotion of peace. Just keeping out of war is not enough to meet the requirements of the peace problem of the world.

A man may do his duty if he does his part in the creating of good in the world. It does not necessarily follow from this that he is virtuous in his relation to the good thus created. Virtue demands a consideration of justice, and justice enters the problem in connection with the distribution of good. Even duty may require a recognition of justice but virtue cannot live without it. It is quite possible to find a solution of the problem that will meet all logical requirements so far as producing good is concerned, but such a solution would not meet ethical requirements unless justice is done the parties concerned. We would not judge it as right unless the hypothesis offered afforded a "fair" distribution of good. Indeed this is the ground on which the present economic order is condemned. We may regard economic goods as good in so far as they minister to the satisfaction of legitimate and wholesome desires of men, and, if labor were willing to accept the dictates of capital, the established order would meet logical requirements from the standpoint of production, but it does not meet ethical requirements from the standpoint of distribution at many points. The appalling amount of discontent and unrest in the world at the present time indicates a growing sense of injustice as the result of the present economic order. This dissatisfaction is not confined to the so-called "bolshevik" elements of society, but has permeated to a large measure the intelligent and better classes of society. This feeling of injustice cannot be due entirely to unfair-mindedness on the part of the people.

The question of fair distribution is not solved by an abstract justice. How is justice to be determined? Is it just to reward all men equally regardless of respective services rendered, or should men be rewarded in proportion to their contribution of values? Should a man be rewarded according

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to his ability or according to his efforts? Should we distribute our goods according to needs or according to merit? These are some of the canons of distributive justice. Each case must be weighed on its own merits if justice is to be done, and to talk about "fair distribution" apart from specific problems is merely an indulgence in fine verbiage.

Happiness is found in the creating of good, the doing of right, the achieving of freedom, the accepting of responsibilities, the performing of duty, the perfecting of virtue, the establishing of justice and the determining of the ideal in each and every situation with which an individual is confronted. Happiness is not found at the solution point of the problem, but in the problem itself. It has thus shifted its position and here we differ with the utilitarians. Happiness is not a goal; it is a product of activity. Like pleasure it is an accompaniment of activity rather than the end toward which activity operates. We do not possess happiness, but are making it in and through our activities. Happiness is not an achievement but is a constant achieving. It is not created but is re-created in each specific setting. The pleasure derived from eating a piece of pie is not a possession. It can only be experienced again by eating a similar piece of pie under like conditions. Happiness must be so experienced. Happiness as an end of desire is as much an illusion as wealth, fame, success, power, or any other insatiable desire.

Are all these factors—good, right, freedom, responsibility, duty, virtue, justice and happiness—to be given equal consideration in connection with a problem, or should the emphasis be placed now on this and now on that factor according to the conditions of the problem, or should the emphasis always be placed on good and right or duty and justice as the most important factors in every problematic situation? Obviously each problem requires its own analysis, and good moral judgment consists of knowing where and how and when to stress the various factors involved. It is at this point that the ideal

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figures in the problem. The ideal is the adjusting of the various factors in accordance with the conditions and requirements of the problem. The ideal is not a metaphysical entity; it is a hypothesis. It represents ethical judgment after all factors have been carefully considered. The ideal is matured judgment with reference to a problem. A better state of affairs is expected to be realized by executing the ideas for which the ideal stands. The ideal is the best hypothesis in the light of judgment that has been duly weighed. It is the idea that makes the present most significant and gives promise of a more meaningful future.

The ideal man is he who finds happiness in so perfecting a virtuous organization of his nervous mechanism that he is free to do his duty and to accept responsibility for the right promoting of the good that justice may be realized in the situations in which he functions as an agent.

NORMAN BOARDMAN

STATE NORMAL SCHOOL
MINOT, NORTH DAKOTA

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BOOK REVIEWS

SOCIAL ASPECTS OF INDUSTRIAL PROBLEMS. By Gertrude Williams, Lecturer in Social Studies, Bedford College for Women, University of London. London: P. S. King and Son, 1923. Pp. 260. Price 6*s*. net.

This is a skilful and interesting treatment of "labor" problems with a view to a moral or ethical standard. It is therefore an essay on the economic factors of moral welfare or civilization, and is not the usual repetition of statistical "facts" which contemporary economic science contains. "Social economics," says Mrs. Williams, "takes as its province the application of ethical standards in the construction of a better society." The chapters which immediately follow, however, on the organization of capital and of labor are largely descriptions of economic facts in the traditional manner. The point of view is not that of conventional admiration for industrial civilization, for there is an undercurrent of criticism in the descriptions. Indeed, it is noticeable that the author, who seldom quotes from others, gives as her references in many places the publications of the Labour Research Department and the similar department under the Labour Party and General Council. In regard to unemployment it is boldly asserted that a more equal distribution of wealth would diminish the fluctuations of trade and that this would be morally an advantage. The treatment of economic facts thus becomes subordinate to the science of moral welfare which is usually called ethics, and indeed it is time that students of industry and commerce began to understand that "labor unrest" and programs of reform are based not upon economic but upon ethical principles. The defects of contemporary civilization are moral defects, and therefore such a book as this by Mrs. Williams is an important contribution to our intellectual needs. It is, however, preliminary. Unfortunately those who have studied economics in the old tradition are seldom well trained in ethics. They are not skilful in their analysis of the moral standard and tend to accept without criticism certain conventional ideas of the good of the community. They often lack psychological knowledge which is necessary for estimating character and conduct. Ethics, in fact, is not commonly regarded as an exact science. Anyone feels able to tell a good man from a bad, although most educated men would hesitate to assume that they could tell what

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is and what is not economically productive. Of course, ethical philosophers are partly to blame, for they are usually ignorant of the facts of contemporary social life in industry or politics. But obviously we need a much more exact conception of a good act and a good society, before we can usefully apply our moral criterion to the practice of industry.

Mrs. Williams' book makes some contribution to the analysis of moral standards, for example, in regard to the social and industrial position of women. It is said that "the right for which women should strive is neither complete sex specialization, nor complete disregard of sex"; and again "the normal social unit is likely to remain, for some time, the father, the mother, and the young children." But the good life embodied in the monogamic family is not further analyzed or criticized. Even in the last chapter of the book, on "Government and Industry," the tendency is to analyze economic and not ethical facts. But this is, no doubt, due to the lack of definiteness in our contemporary conceptions of moral life. We are familiar with means but not with ends.

C. DELISLE BURNS

THE DANCE OF LIFE. By Havelock Ellis. London: Constable & Co., 1923. Pp. 320. Price, 12*s*. net.

There is a peculiar and persuasive quality in Mr. Havelock Ellis' latest book. "I have never written," he tells us, "but with the thought that the reader, even though he may not know it, is already on my side." After the first shock of surprise at the thesis, in which not only life, but the universe is regarded as a dance, we are carried away by Mr. Ellis' delicate but arbitrary fantasy. Yet is it, after all, arbitrary? The charm of his style is assimilated to the "infinite iridescent aspect of the world," and he disclaims, until he can attain to a correspondingly infinite variety of statements, a position that could in any sense be described as truth. He is the most *ondoyant* and *divers* of writers. Hence it is difficult to represent his position, otherwise than by emphasizing his shining, like the sun, upon the just and unjust, with the complete objectivity which is, according to Bergson, genius.

The first chapter is both subtle and curious, emphasizing that man, waking either individually or collectively, is an artist, and his civilization an art or a complex of arts. A remark of Einstein that "the positive motive which impels men to seek a simplified synoptic view of the world conformable to their own nature," overcoming the world by replacing it with this picture, gives the key to Mr. Ellis' book. Besides the initial chapter on the "Dance" Mr. Ellis includes a valuable and personal paper upon religion and morals.

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It has become a commonplace to assume an opposition between mysticism and science, but Mr. Ellis draws the conclusion that science and mysticism are alike based on fundamental natural instincts, appearing spontaneously all over the world, and if (in primitive times) they naturally tend to be embodied in the same individual in such a way that each impulse would seem to be dependent on the other for its full development, there can be no ground for accepting any disharmony between the two. The process of "Conversion" he characteristically describes, as not being, as is generally assumed, a turning toward belief but, more strictly, a *turning round*, a revolution and readjustment of psychic elements to one another enabling the whole machine to work harmoniously.

In the essay on the art of morals he is sensitively aware of the sterility of abstract moral speculation culminating in rigid maxims, which move in the sphere of reason, but not of vital action. If the moral world is to be governed by law, better to people it with automatic machines than with living men and women. As Jules de Gaultier holds, "art is in a certain sense the only morality which life admits." In so far as it can be infused with the spirit and method of art, morality is transformed into something beyond morality, and becomes the complete embodiment of the Dance of Life.

M. J.

WAR: ITS NATURE, CAUSE, AND CURE. By G. Lowes Dickinson. London: George Allen & Unwin, Ltd., 1923. Pp. 155. Price, 3*s*. 6*d*. net.

Those who are interested in international affairs should read all that comes from the pen of Mr. Lowes Dickinson. They should do so, not only because he is perhaps the best of living essayists, but because no one else who writes on international problems thinks out so carefully and so clearly exactly what he wants to say, and says it with such lucidity and such courage. Mr. Lowes Dickinson thinks right through to the bottom of the difficult topics with which he deals, reduces them to their simplest terms, and in language that cannot be misunderstood, states the conclusions which result from his honest and searching reflection. Anyone who does this for the problems of international affairs renders an essential service to his fellow-men. On no subject that affects vitally the welfare of every political community in the world has there been so much loose thought and vague talk as there has been about the relations of one nation with another, and particularly about that relation which is known as war. Mr. Lowes Dickinson goes straight to the root of the matter, sweeps away the shibboleths that are current by direct questions to which an

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answer "yes" or "no" must be given, and reduces to its true terms the whole problem of war.

His thesis is that the problem of war is the greatest issue that faces humanity at the present time; that in the past war has been caused by the desire of nations to control the territory of other nations, in the mistaken belief that power or profit so acquired would add to the well-being of their own people; and that it can only be prevented for the future if this conception is abandoned and a conception of international co-operation for the common promotion of common interests accepted in its place.

It is impossible that in handling with frankness, perhaps even with brutal frankness, such a theme as this, Mr. Lowes Dickinson should not say much that to some of his readers, at first sight, may seem provocative. But we doubt if any of them will not be disarmed by his engaging Preface and by his closing words: "I ask you to put aside any irritation you may feel with me, and concentrate your thoughts on the tremendous question." The "tremendous question" is whether we are for war or against it. This to Mr. Lowes Dickinson is the only issue that really matters, and only when we have settled our answer shall we have, he urges, the clue to all the detailed policies in international affairs that we ought to pursue.

P. J. BAKER

LONDON, ENGLAND

PROSPECTS OF INDUSTRIAL CIVILISATION. By Bertrand Russell. London: G. Allen & Unwin, Ltd., 1923. Pp. 283. Price, 7*s*. 6*d*. net.

Mr. Russell's latest book is exceedingly stimulating reading, if it may be said to be stimulating exercise to kick against the pricks. He projects upon the page the strange and ominous outline of modern industrialism which has, as he suggests, an analogy with the Calvinist's outlook in religion. The mechanistic outlook, particularly as it exists among the great capitalists, is (he finds) almost indistinguishable from Calvinism, when the machine is substituted for God, the efficiency of the machine in place of the glory of God, the rich and the poor in place of the saved and the damned and inheritance in place of predestination. Calvinism is a forbidding belief, and equally forbidding is the mechanistic outlook.

Accepting the necessity of industrial civilization, this book lays valuable emphasis upon the solidarity of world-industrial civilization—the fact that the whole group of countries that have founded their civilization upon this base must stand and fall together. Hence the international mind is the most urgent need today, for if there is no vision, the people perish. If we continue to fight "great wars," civilization will perish.

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Civilization may also founder if the class war is insisted on, for such a war would shatter the world to pieces. The book is the result, to a great extent, of the impression of bolshevist Russia upon Mr. Russell's mind, followed by the calm of China, a country which taught him to regard "progress" and "efficiency" as the great misfortunes of the Western world. To the less alien continent of America he is less than fair when he assumes that, in a thoroughly industrialized community such as the United States, there is little appreciable difference between one person and another! There is much to be said for the establishment of great land-empires, America, Russia, and perhaps China, which will be impotent for attack and in defense invulnerable, but there are so many *ifs* in the argument that we cannot be so confident of the result as Mr. Russell. It is provocative to read that patriotism in its common form "is the worst vice of which a modern man can be guilty," and that nations today are living on blood money—"payment enacted by the threat of Death. Therefore the most prudent Nation is the nation which is in the best position to levy blackmail."

Some of Mr. Russell's long shots are wide of the mark; the previsions of an intellectual remote from affairs. He appears to believe that in England and America the workers, who from long practice have come to understand the industries in which they are employed, would be able to manage them for themselves; and also assumes that if war, armaments, advertisements, and commercial competition were abolished, "We could all subsist very comfortably on four hours' work a day." Is the present decay of religion to be ascribed simply to the independence of the industrial wage-earners of the weather, while people whose manner of life is more primitive, such as the Breton sailors, are still Catholic? "People who depend upon the weather," Mr. Russell adds, "are always apt to be religious." What makes the book extremely readable is Mr. Russell's vigorous clarity, his efficiency in phrase-making.

M. J.

LONDON, ENGLAND

SHORTER NOTICES

LE PROBLÈME DE LA VÉRITÉ DANS LA PHILOSOPHIE DE SPINOZA. By Rafael Lévêque. No. 17, Publications of the University of Strassburg. Oxford University Press, 1923. Pp. 155. Price, 7 fr., 50 c.

This is a study for the Diploma of the University of Strassburg. It is set out in short sections with headings of an almost journalistic character; but it is a serious contribution to commentary upon Spinoza. The main point is that there is for Spinoza no unknowable and no limit to human reasoning. Truth is reached directly by the process of thinking, and this turns out to be part of life of God; for we are ourselves, in a sense, God. The play upon the various

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meanings of the word "idea" makes the statement difficult to criticize; for the author seems to assume that the idea of a thing is not the thing, but he does not clearly show what else it can possibly be. The moral problem in Spinoza is not dealt with, but of course, Spinoza's overwhelming interest in the moral life is recognized and explained by the author.

C. D. B.

A HISTORY OF HINDU POLITICAL THEORIES, FROM THE EARLIEST TIMES TO THE END OF THE FIRST QUARTER OF THE SEVENTEENTH CENTURY A.D. By V. Ghoshal, M.A., Ph.D. Humphrey Milford: Oxford University Press, 1923.

The study of political theory in India received a great stimulus a few years ago when the ancient work on the art of government was discovered, which is attributed to Kantilya, minister of the Chandragupta who expelled the Greeks from India. This *Arthaçastra* has been described as "perhaps the most precious work in the whole of Sanskrit literature," Dr. Ghoshal has analyzed the work, and has given an account of the extensive literature that deals both with the art of government and with political theory. He shows how this subject, usually ignored by Western scholars, forms an important part of Indian thought. His work is excellently written, and is a model of clear and sober judgment.

E. J. T.

PROCEEDINGS OF THE ARISTOTELIAN SOCIETY. Vol. XXIII. Papers read in Session 1922–23. London: Williams and Norgate, 1923. Pp. 289. Price, 25*s*. net.

ARISTOTELIAN SOCIETY. Supplementary Volume III. RELATIVITY, LOGIC AND MYSTICISM. Papers read in joint session at Durham, July, 1923. London: Williams and Norgate, 1923. Pp. 184. Price, 15*s*. net.

These two volumes contain the Papers of the Aristotelian Society for the last academic year. The Proceedings include a notice of the work of the late Mr. Bosanquet and a list of his papers read before the Society. The presidential address is by Professor A. N. Whitehead on "Uniformity and Contingency." It is a study of some omissions in the philosophy of Hume and of Bertrand Russell. There are two methodological papers, one on "Existence" by Professor Hoernlé and one on the meaning of "Unconscious" by Professor Broad. Criticism is represented by Professor L. J. Russell's paper on Leibniz; and new ground is broken by Rev. L. J. Walker's paper on "Matter" and Mr. E. S. Russell's paper on "Psychobiology." Moral problems are treated by Mr. C. E. M. Joad and Mr. M. Ginsberg, on "Free Will" and "Purpose."

The volume entitled "Relativity, Logic and Mysticism" is as unsystematic as its title implies. There are items for every taste. Relativity has to come in because everyone has heard of it, but it is doubtful whether many philosophers know what mathematicians mean by it. Biological categories are discussed; and there is a rather acid discussion of universals by Mr. G. E. Moore and Professor Stout. The two last sections of the book deal with the New Idealism, which is taken to mean the philosophy of Croce and Gentile. They are accused of solipsism by some of the disputants, and others say that neo-Idealists cannot logically accept mysticism. The obscurity of nearly all the terms in the discussion leaves it open to Dean Inge to conclude with the breezy assertion, after quoting Croce, "A certain amount of petulance is pardonable in face of such nonsense as this." No problems of moral theory or of social philosophy are dealt with in this volume. The two volumes together are significant of the present state of the philosophical sciences. There is no "teamwork," such as is

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producing important results in the physical and historical sciences. There are too many gospels; and the temptation to catch at passing fashions trip up too many philosophers. Naturally in the discussion between philosophers their points of difference are more obvious than the assumptions which both parties accept; and the Aristotelian volumes show very well the sort of work which individuals have been doing. But there is more contingency than uniformity in these two books. They will perhaps be all the more valuable to students of contemporary tendencies.

C. D. B.

THE DEVELOPMENT OF BERKELEY'S PHILOSOPHY. By G. A. Johnston, M.A. D. Phil., Sometime Lecturer in Moral Philosophy in the Universities of St. Andrews and Glasgow. London: Macmillan & Co., 1923. Pp. 400, Index. Price, 8*s.* 6*d.*

This is a valuable historical study, clearly written and candidly expressed. The evidence for Berkeley's views is put forward simply, but it is even more interesting to find a due acknowledgment of the work of Berkeley's contemporaries to whom the chance of fame has not been so kind. An Appendix deals with Collier and another Appendix deals with John Sargeant, both of whom anticipated some of Berkeley's arguments. The treatment of Berkeley's own theories is critical. Thus, for example, the problem of "idealism" is stated, namely, if the mind makes a difference to its object, how can the same object be perceived by more than one mind? Dr. Johnstone remarks that to this question "Berkeley's answer is thoroughly unsatisfactory." Indeed to call in God or an Absolute to save you from the difficulties of your hypothesis should be regarded as a confession of a defect in the hypothesis; but philosophers seldom are willing to go back upon their first false step. To try again perhaps savors too much of "mere" science. The study of Berkeley indeed shows in its clearest and simplest form the character of the error which left philosophy for a century wandering in the mist of "ideas," "notions," "spirit," and infinite mind; but it is doubtful whether any student can understand the real philosophical problem unless he has actually in his own thinking passed through the stage which is characteristic of Berkeley.

C. D. B.

A HISTORY OF INDIAN PHILOSOPHY. By Surendranath Dasgupta, M.A., Ph.D., Vol. I. Cambridge: The University Press, 1922. Pp. xvi+528. Price, £2.

The study of the history of Indian culture in Europe has been a continuous struggle for more light. Again and again conclusions have been reached that have had to be abandoned. But Indian philosophy was fortunate in having as its first expounder H. T. Colebrooke, one of the earliest but at the same time one of the ablest of the Indianists. His work, however, was confined to the six orthodox systems, and to these only in their classical form. It is only gradually that the means have been made accessible to the West for studying the continuous history of the thought of some 3,000 years, from the Vedic culture as crystallized in the Upanishads, and developed in the orthodox and unorthodox systems derived directly from these either as true heirs or in conscious opposition.

Dr. Dasgupta's work is the first comprehensive treatment of the subject as a whole. He has the advantage of being able to embrace the point of view of Western scholarship with a masterly knowledge at first hand of the Indian treatises. Thus he is not hampered by the prejudices and guesses due to a half-knowledge of the texts, but approaches his work with an insight into Hindu

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thought that only a Hindu can possess. The beginnings of philosophical and cosmological speculation are indeed a problem for the Hindu as well as for the Western scholar. The Upanishad thought, says Hillebrandt, is to be placed in the region of a primitive folk psychology, not at the side of Kant or Schopenhauer. This is not surprising when we reflect that it had developed its fundamental speculations before Thales had stepped out of the fossilized mythology of the sixth century. But there are no cataclysmal revolutions of thought, and we can trace from this period the lines of speculation of the various schools. The authoritative works of these schools—the Sutras—are centuries later than the Upanishads. It is here where the author has specially shown his competence as historian, as well as his philosophical acumen. There has, for example, been much dispute about the earlier forms of the Samkhya philosophy. Evidently what is wanted here is a knowledge of all the early works that make any reference to it. We do not expect the philosopher to read works on medicine or grammatical commentaries. But this is what Dr. Dasgupta has done, and he has been the first to point out important historical evidence for several systems in the medical work known as *Caraka*, and in the great commentary of Patanjali on Pānini's grammar. Besides this he has used the later philosophical works and commentaries down to modern times. This thoroughness increases our confidence in his judgment when he comes to discuss the evolution of the philosophical principles. His conclusions are based directly on the evidence and on what he knows to be historically possible. The same sobriety and respect for facts is shown in his treatment of Vedanta. In the West this system (really a group of schools) is often supposed to mean merely Sankara's treatment of it, and this treatment is even supposed to be typical of Indian philosophy as a whole. And yet the charge is made by the Hindus themselves that Sankara was a crypto-Buddhist. This charge Dr. Dasgupta shows is largely justified. The chief principle in which his teaching differs from that of other Vedantic schools was drawn from the Buddhists. Buddhist philosophy is very fully treated. Before now we have had the exposition of the later schools, which the discoverers thought represented primitive Buddhism, and then Pali Buddhism came to the front and threw the other into the shade. The author puts them into their right relations. The earlier Pali Buddhism never developed much philosophy, indeed it was not primarily a philosophy, and as the author points out, it never influenced the main course of Indian thoughts. It was the later development that came into conflict with the orthodox schools and had such an influence on Sankara. The author has wisely refrained from putting any pressure on Indian thoughts to make them appear as European, and has tried to choose words which have not been made dangerous by the acquirement of technical senses. At the same time he has added the original Sanskrit terms, so that his interpretation can be tested at every step. This invites a serious effort of thought on the part of the Western reader, but it is inevitable, if he does not wish to be put off with a hollow substitute adapted to mental indolence.

In one respect the author has modified his practice when he comes to deal with the Samkhya and Nyaya physics. Here he follows Dr. B. N. Seal's terminology. Dr. Seal has no doubt thrown much light on this subject, but we should have preferred to have the author's own method of stating the necessarily crude physics in all their crudeness. But crudeness is a relative term; the atomic theory was certainly much closer to modern science than anything in Leucippus or Aristotle. This is, however, a subsidiary matter. The fact that physics is included at all illustrates the difficulty of early philosophy in freeing itself from matters that are really beyond its province. Owing to the continuity of Indian thought we have in the present volume an account of its philosophy in its full development down to modern times. It covers in fact all that is

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usually thought to constitute Indian Philosophy. But there are still other important schools and movements that the author intends to treat in a second volume. One of these is particularly important as being the chief Indian exponent of a monistic system aiming to solve the problem of plurality. This is Ramanuja's Vedanta. The Samkhya was pluralistic enough. Each of its infinite number of souls is eternal, and reaches salvation by recognizing its distinctness from the ever evolving and dissolving world of matter. In its pluralism it appealed to experience, and Sankara could only explain the plurality by calling it illusion, that is, by denying it. A system that denies experience appears to be near to bankruptcy. But Ramanuja sought to satisfy the monistic impulse as well as to account for plurality. How far he was able to do this is one of the subjects that we look forward to seeing discussed in the author's second volume.

E. J. THOMAS

CAMBRIDGE, ENGLAND

LAW AND FREEDOM IN THE SCHOOL. By George A. Coe. Chicago: The University of Chicago Press, 1924. Pp. ix+129.

This is a penetrating study of the theory of the project method of teaching. In our emphasis upon education as self-expression—unquestionably the correct emphasis—the author feels that we have unduly slighted the fact that all the failures and wrongs of history are themselves "natural expressions of men in natural environments, all are phases of the project in developed form." "Nature, as well as the conventions and customs of society, often urge us into disastrous projects, sometimes miseducating us and leaving us incapable of re-education." This means that we must have projects *anti* as well as *pro*. Otherwise the characteristic over-readiness of the human organism for action leaves it unprepared for, because unwarned of, the environing conditions of failure.

Free purposes, which furnish the raw material for all education, must not, therefore, be interpreted as antithetical to law. The conditions from which free purposes arise and in which the will must function even when experimenting, constitute the varied content for the concept law—natural law (the "cans and cannots"), common and statute law (the "musts and must nots"), and moral law (the "oughts and ought nots"). Precisely how these conditions may be made to function for maximum guidance and yet produce minimum inhibition is the central inquiry of this very stimulating book.

It is apparent that we are facing here again the oldest problem of ethics. The freshness of this most recent treatment arises from the author's making the ethical problem the heart of the project method in education and of the experimental attitude toward life. Its balance is shown by the nearness with which the school is kept to society throughout the treatment. The problem of reconciling freedom and order in the school is greatly intensified by having law for this dynamic situation furnished by a static society. If the potentialities of the project method in school could be actualized, society for which the school trains would itself become far more friendly to controlled experimentation. It is precisely because childhood has so much to contribute to a grown-up and habituated society that the project method in teaching must be furnished the most favorable environment that accumulated experience can offer. The constantly needed reconstruction of society, especially of economic activity, can turn to no other source for hope than to the ethical insight that flows from the ordered freedom of the young.

T. V. SMITH

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BUSINESS FLUCTUATIONS AND THE AMERICAN LABOR MOVEMENT: 1915–1922. By V. W. Lanfear. Columbia Studies in History, Economics and Public Law, Vol. CX, No. 2. New York: Columbia University, 1924. Pp. 129.

This doctoral dissertation seeks to show "how changes in wages, prices, employment, labor mobility, labor absenteeism, etc., during the years 1915–22 tended to emphasize the effect of business prosperity on the attitude of organized wage-earners." From substantial, though incomplete, statistical data, the author is able to indicate that "the efforts of the wage-earners are more successful during periods of prosperity when prices are rising than during periods of falling prices when they are acting on the defensive." During the prosperity that marked the years 1915–20, the wage-earners were nerved by their bettering fortune to gain unusual concessions. They were put on the defensive, however, by the business depression that followed; but the taste of prosperity made them fight more tenaciously to retain what they had held for so short a time. The present suspicious attitude of the courts, the lethargy of public opinion, the antipathy of big business men toward the aims and needs of organized labor are likely to pass with the return to normal business conditions. General welfare demands that it should pass, for labor has not on the whole been unreasonable in its demands.

T. V. SMITH

TO THE MEMBERS OF THE AMERICAN PHILOSOPHICAL ASSOCIATION

In their appeal for the aid of Austrian scholars, the Commission on Intellectual Co-operation of the League of Nations (Professor Bergson, chairman) declared:

> No greater damage can threaten a civilization than the successive destruction of its homes of learning. It is beyond dispute that the war and its economic consequences have brought intellectual life in one entire region of Europe into an extremely precarious position. . . . .
>
> In coming to the assistance of Austria and of other nations whose intellectual life is in danger, you will be strengthening that sense of professional brotherhood which should unite all brain-workers, you will be taking effective and practical action to promote intellectual co-operation, and above all, you will be helping to support civilization in the struggle against the most serious peril which threatens it.

That this need is still urgent in Germany and throughout Central Europe is emphasized in the Commission's report to the League of Nations in September, 1923.

At the annual meeting in 1922, both divisions of the American Philosophical Association voted to aid German and Austrian philosophy. Inquiry has shown that the most effective way in which we can do so is to send recent American philosophical publications which, owing to the impoverished condition and the unfavorable rate of exchange, are not otherwise procurable in Central Europe. For this purpose, we appeal for further gifts of money, books, or current philosophical periodicals, which will be forwarded free of charge to the *Notgemeinschaften* of Germany and Austria. Books may be sent and checks drawn to the order of Professor Morris R. Cohen, College of the City of New York.

For the Committee on International Co-operation,

A. C. ARMSTRONG
MORRIS R. COHEN

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TO THE MEMBERS OF THE AMERICAN PHILOSOPHICAL ASSOCIATION

At the annual meeting of the Eastern Division, December, 1923, a request was presented for aid for the libraries of Japan devastated by the earthquake of September last. The Division welcomed the proposal and voted assistance in so far as the balance in the treasury might permit. The direction of the fund was intrusted to the Committee on International Co-operation (with the undersigned a subcommittee in immediate charge). Unfortunately, a careful examination by the treasurer has disclosed the fact that at present there are no resources available for the purpose. In anticipation of such a contingency, the suggestion had been made during the discussion that the committee might undertake the collection of money and books from individual contributors. We appeal, therefore, to the members of the Division to send in whatever donations they may find themselves in a position to make. The need is great. Entire libraries were destroyed by the earthquake and the fires which followed the shock. There is a deplorable lack of books of reference and for collateral reading; even textbooks are wanting, so that whole classes are without the necessary basis for their daily work. Thus, almost any book which a member can spare from his private library will be of value.

Arrangements are making for the free transport of books from New York to Japan. It is also expected that routine expenses will for the most part be met by private subscription. This will make it possible to apply whatever funds may be contributed directly to the purchase of representative works by American scholars. It will further aid if members can see their way clear to donate copies of their own works.

Contributions of money or books (packages marked, For Japan) may be sent to Professor Morris R. Cohen, College of the City of New York, St. Nicholas Terrace and 139th Street, New York City. Checks should be drawn to Professor Cohen's order.

For the Committee,

A. C. ARMSTRONG
M. R. COHEN

BOOKS RECEIVED

ABBOTT, EDITH. Immigration: Select Documents and Case Records. Chicago: University of Chicago Press, 1924. Pp. xxii+809. Price, $4.50.

BABBITT, IRVING. Democracy and Leadership. New York: Houghton Mifflin Co., 1924. Pp. 349. Price, $3.00.

BERL, E. The Nature of Love. Translated by F. Rothwell. London: Chapman & Hall, 1924. Pp. xiv+242. Price, 12*s.* 6*d.* net.

BERMAN, EDWARD. Labor Disputes and the President of the United States. Columbia Studies in History, Economics, and Public Law. Vol. CXI, No. 2. Whole No. 249. New York: Longmans, Green & Co., 1924. Pp. 284.

BOBBITT, FRANKLIN. How to Make a Curriculum. New York: Houghton Mifflin Co., 1924. Pp. 292.

BOVET, PIERRE. The Fighting Instinct. Translated by J. Y. T. Greig. London: G. Allen & Unwin, Ltd., 1923. Pp. 252. Price, 10*s.* 6*d.* net.

BRANDT, CHARLES. The Vital Problem. New York: Benedict Lust, 1924. Pp. 219. Price, $2.10.

BURNS, C. DELISLE. A Short History of International Intercourse. London: G. Allen & Unwin, Ltd., 1924. Pp. 159. Price, 5*s.* and 3*s.* 6*d.* net.

COE, GEORGE A. Law and Freedom in the School. Chicago: University of Chicago Press, 1924. Pp. ix+133. Price, $1.75.

CHRONICON SPINOZANUM II. Hagae Comitas. Curis Societatis Spinozanae, 1922.

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COHN, J. Theorie der Dialektik: Formenlehre der Philosophie. Leipzig: F. Meiner, 1923. Pp. 355. Price, 16*s*.

DUCASSE, CURT JOHN. Causation and the Types of Necessity. University of Washington Publications in the Social Sciences. Vol. I, No. 2, pp. 69–200. Seattle: University of Washington Press, 1924. Pp. 131.

DUTT, SUKUMAR. Early Buddhist Monarchism, 600 B.C.–10 B.C. New York: E. P. Dutton & Co., 1924. Pp. 196. Price, $4.50.

EDGELL, BEATRICE. Theories of Memory. Oxford: The Clarendon Press, 1924. Pp. 174. Price, 7*s*. 6*d*. net.

EICHEL, OTTO R. The First Report on Marriage. Statistics in New York State (exclusive of New York City) for the three years 1916, 1917, 1918, combined, and for the year 1919. New York State Department of Health.

FOLLETT, M. P. Creative Experience. New York: Longmans, Green & Co., 1924. Pp. xix+303. Price, $3.00.

GEMELLI, A. Nuovi orzizzonti della psicologia sperimentale. Milano: società editrice: Vita e Pensiero. 1924. Pp. xiv+387. Price, 18 lire.

GIBBONS, HERBERT ADAMS. America's Place in the World. New York: Century Co., 1924. Pp. 223. Price, $2.00.

GIRAU, P. Les origines de la Pensée. Paris: F. Alcan, 1923. Pp. xiii+644. Price, Frs. 40.

HULME, T. E. Speculations. Essays on Humanism and the Philosophy of Art. Edited by Herbert Read. With a Frontispiece and Foreword by Jacob Epstein. New York: Harcourt, Brace & Co., Inc., 1924. Pp. xvi+271.

KEMP-SMITH, NORMAN. Prolegomena to an Idealistic Theory of Knowledge. London: Macmillan & Co., 1923. Pp. xiv+237. Price, 10*s*. 6*d*. net.

LINDSAY, JAMES. Autobiography. Edinburgh and London: William Blackwood & Sons, 1924. Pp. vi+166.

MCDOUGALL, WILLIAM. Ethics and Some World Problems. New York: G. P. Putnam's Sons, 1924. Pp. xvii+256.

MARSHALL, H. R. The Beautiful. London: Macmillan & Co., 1924. Pp. x+328. Price, 15*s*. net.

MENANDA, F. M. Constructive Conscious Control of the Individual. London: Methuen & Co., 1923. Pp. xx+317. Price, 10*s*. 6*d*. net.

MILLER, NELLIE B. The Flame of God. New York: E. P. Dutton & Co., 1924. Pp. x+155. Price, $1.50.

RAMAGE, A. G. The Dynamics of Thought and Impulse: A Hypothesis. Edinburgh: Grant, 1924. Pp. 40. Price, 2*s*.

RATHBONE, ELEANOR F. The Disinherited Family: A Plea for the Endowment of the Family. London: Arnold, 1924. Pp. xii+324. Price, 7*s*. 6*d*. net.

ROLFES, E. Die Philosophie des Aristoteles. Leipzig: F. Meiner, 1923. Pp. xv+380. Price, 6*s*. 4*d*.

SANTAYANA, GEORGE. The Unknowable. The Herbert Spencer Lecture. Oxford: The Clarendon Press, 1923. Pp. 30. Price, 2*s*. net.

SATOMI, KISHIO. Japanese Civilization. New York: E. P. Dutton & Co., 1924. Pp. xiv+238. Price, $4.50.

SAUNDERS, KENNETH J. Epochs in Buddhist History. Chicago: University of Chicago Press, 1924. Pp. xix+243.

SCHILLER, F. C. S. Problems of Belief. London: Hodder & Stoughton, 1923. Pp. 184. Price, 3*s*. 6*d*. net.

SOULS, GEORGE. The Accumulation of Capital. Social versus Personal Savings. New York: League for Industrial Democracy, 1924. Pp. 19. Price, $0.10.

TURNER, J. E. The Philosophic Basis of Moral Obligation: A Study in Ethics. London: Macmillan & Co., 1924. Pp. xii+280. Price, 12*s*. 6*d*. net.

WEST, W. REED. Contemporary French Opinion on the American Civil War. Johns Hopkins Studies in Historical and Political Science. Series XLII, No. 1. Baltimore: Johns Hopkins Press, 1924.

WOOD, H. G. Living Issues in Religious Thought. London: G. Allen & Unwin, Ltd. 1924. Pp. 187. Price, 6*s*. net.

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